

M-1424

रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003—08

REGISTERED No. DL—(N)04/0007/2003—08



भारत का राजपत्र The Gazette of India

P.O. 190
L-3
CPB-190

असाधारण
EXTRAORDINARY
भाग II — खण्ड 2
PART II — Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 21] नई दिल्ली, मंगलवार, अक्टूबर 21, 2008/आश्विन 29, 1930
No. 21] NEW DELHI, TUESDAY, OCTOBER 21, 2008 /ASHVINA 29, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on 21st October, 2008:—

I

BILL NO. XLVIII OF 2008

A Bill to regulate the import, manufacture, export, sale, transport, distribution, quality and use of pesticides with a view to—

- (i) control pests;
- (ii) ensure availability of quality pesticides;
- (iii) allow its use only after assessing its efficacy and safety;
- (iv) minimize the contamination of agricultural commodities by pesticide residues;
- (v) create awareness among users regarding safe and judicious use of pesticides,

and to take necessary measures to continue, restrict or prohibit the use of pesticides on reassessment with a view to prevent its risk on human beings, animals or environment, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Pesticides Management Act, 2008.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and for different provisions of this Act.

Short title,
extent and
commencement.

Application of
other laws not
barred.

Definitions.

2. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

3. In this Act, unless the context otherwise requires,—

(a) "active ingredient" means the technical grade pesticide present in a formulation;

(b) "animals" means animals useful to human beings and include fish and fowl, and such kinds of wild life as the Central Government may, by notification in the Official Gazette, specify, being kinds which in its opinion is desirable to protect or preserve;

(c) "batch" means an identifiable quantity of a technical grade pesticide or its formulation which has been manufactured and processed under uniform conditions in a single lot;

(d) "Board" means the Central Pesticides Board constituted under section 4;

(e) "Central Pesticides Laboratory" means the Central Pesticides Laboratory established, or as the case may be, the institution accredited under section 21;

(f) "deemed registered pesticides" means the pesticides registered on the basis of their being imported or manufactured immediately before the commencement of this Act;

(g) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property;

(h) "export" means taking out to any place outside those territories to which this Act extends from a place inside the territories;

(i) "formulation" means manufacture of a preparation containing one or more technical grade pesticide in a definite proportion along with other specified ingredients;

(j) "household pesticide" means any pesticide that is sold to the user for the purpose of use only in household and intended to destroy, deter, render harmless, prevent the action of or otherwise exert a controlling effect on any harmful pest by chemical or biological means, which is not used on fields or farms or for commercial storage applications;

(k) "import" means bringing into any place within the territories to which this Act extends from a place outside those territories;

(l) "label" means any written, printed or graphic matter on the immediate package and on every other covering in which the package is placed or packed and includes any written, printed or graphic matter accompanying the pesticide;

(m) "licensing officer" means a licensing officer appointed under section 16;

(n) "manufacture", in relation to any pesticide, includes—

(i) any process or part of a process for making, altering finishing, packing, repacking, labelling, breaking up or otherwise treating or adopting any pesticide with a view to its sale, distribution or use without changing the date of manufacture or expiry of such pesticide; and

(ii) any process by which a preparation containing a pesticide is formulated;

(o) "misbranded"—a pesticide shall be deemed to be misbranded—

(i) if its label or leaflet contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or

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(ii) if its label does not contain a warning or caution which may be necessary and sufficient, if complied with to prevent risk to human beings or animals; or

(iii) if any word, or statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other words, statements designs or graphic matter have been displayed on the label in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or

(iv) if it is not packed or labelled as required by or under this Act; or

(v) if the label contains any reference to registration other than the registration number; or

(vi) if the date of manufacture and the date of expiry printed on its label is at variance with the shelf-life as approved by the Registration Committee;

(p) "nominal value" means the registered strength of a pesticide;

(q) "other Ingredients" means inert material, wetting agents, dispersing agents, emulsifying agents, stabilizers or other substances which are added in a specified proportion to technical grade pesticide to make a formulation;

(r) "package" means a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper, or such other things as approved by the Registration Committee, in which an pesticide is placed or packed;

(s) "pesticide" means any substance or mixture of substances of chemical or biological origin intended for preventing, destroying, attracting, repelling, mitigating or controlling any pest including unwanted species of plants or animals during the production, storage, transport and distribution of agricultural commodities or animal feeds including substances intended for use as plant growth regulator, defoliant, desiccant, fruit thinning agents, or sprouting inhibitor and substances applied to crops either before or after harvest to protect them from deterioration during storage and transport;

(t) "Pesticide Analyst" means an Pesticide Analyst appointed under section 24;

(u) "pest control operator" means any person who undertakes pest control operations and includes the person or the firm or the company or the organisation under whose control such person is operating.

(v) "Pesticide Inspector" means an Pesticide Inspector appointed under section 25;

(w) "premises" means any land, shop, stall or place, where any pesticide is sold or manufactured or stored or used, and includes any vehicle carrying pesticides;

(x) "prescribed" means prescribed by rules made under this Act;

(y) "registered", with its grammatical variations and cognate expressions, means registered under this Act;

(z) "sale", with its grammatical variations and cognate expressions, means the sale of any pesticide whether for cash or on credit and whether by wholesale or retail, and includes an agreement for sale, an offer for sale, exposing for sale or having in possession for sale of any pesticide or an attempt to sell any such pesticide;

(za) "sub-standard"—a pesticide shall be deemed to be sub-standard—

(i) if it does not conform to the active ingredient test approved for it by the Registration Committee and its active ingredient is within five per cent. of the nominal value when applied beyond the upper and lower limits prescribed for conforming to the test;

Provided that no tolerance limit shall apply in case of pesticides, which are registered on minimum purity basis; or

(ii) if it does not conform to other tests specified or approved for it by the Registration Committee while granting registration;

(zb) "spurious"— a pesticide shall be deemed to be spurious—

(i) if it is not registered or licensed in the manner required by or under this Act; or

(ii) if on test or analysis it shows active ingredient higher or lower even beyond the limits prescribed under clause (v); or

(iii) if it is an imitation of, or is sold under the name of, another pesticide; or

(iv) if the container bears the name of the person or company purporting to be the manufacturer of the pesticide, which is either fictitious or does not exist; or

(v) if the chemical composition as approved by the Registration Committee is not adhered to or is modified or changed by adding or substituting any ingredient or substance; or

(vi) if it has outlived its shelf-life, as evident by the date of manufacture and the date of expiry as printed on its label, approved by the Registration Committee and displayed for sale, distribution, use or caused to be used or not disposed of as per provision under section 52; or

(vii) if its import, manufacture, use or sale is prohibited and it is found to be imported, manufactured, stocked, distributed, transported, sold or exhibited for sale, caused to be used;

(zc) "State Government", in relation to a Union territory, means the administrator of that Union territory appointed by the President under article 239 of the Constitution;

(zd) "stockist" in relation to any household pesticide means, any person who purchases such packages for distribution or re-sale from any manufacturer of such pesticide;

(ze) "technical grade pesticide" means purest form of a pesticide produced for commercial use, prior to being formulated;

(zf) "worker" means a person employed under a contract of service or apprenticeship.

CHAPTER II

CENTRAL PESTICIDES BOARD

Constitution
of Central
Pesticides
Board.

4. (1) The Central Government shall, as soon as may be, constitute a Board to be called the Central Pesticides Board to advise the Central Government and the State Governments on scientific and technical matters arising out of administration of this Act and to carry out the functions assigned to it by or under this Act.

(2) The Board shall consist of the following members, namely:—

(i) Director General of Health Services, who shall be the Chairperson; *ex officio*

(ii) Joint Drugs Controller General of India; *ex officio*

(iii) Agriculture Commissioner, Department of Agriculture and Cooperation, Ministry of Agriculture; *ex officio*

(iv) the Plant Protection Adviser to the Government of India; *ex officio*

(v) a representative of—

(a) Director of Storage and Inspection, Ministry of Food, Consumer Affairs and Public Distribution;

(b) Chief Adviser of Factories;

(c) Director, National Institute of Communicable Diseases;

(d) Director-General, Indian Council of Medical Research;

(e) Director, Zoological Survey of India;

(f) Director-General, Bureau of Indian Standards;

(g) Director-General of Shipping, Ministry of Road Transport and Highways;

(h) Joint Director, Traffic (General), Ministry of Railways (Railway Board);

(i) Secretary, Central Committee for Food Standards;

(j) Animal Husbandry Commissioner, Department of Animal Husbandry, Dairying and Fisheries;

(k) Joint Commissioner (Fisheries), Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture;

(l) Deputy Inspector-General of Forests (Wild Life), Ministry of Environment and Forests;

(m) Industrial Adviser (Chemical), Department of Industrial Policy and Promotion, Ministry of Commerce;

(n) Department of Biotechnology;

(o) Ministry of Commerce, Department of Commerce;

(p) Central Ground Water Board;

(q) National Institute of Nutrition;

(r) Ministry of Law;

(vi) Assistant Director-General (Plant Protection), Indian Council of Agricultural Research, *ex officio*;

(vii) Director, Central Pesticides Laboratory, *ex officio*;

(viii) Assistant Director-General (Prevention of Food Adulteration), Ministry of Health and Family Welfare, *ex officio*;

(ix) Additional Industrial Adviser (Chemicals), Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers, *ex officio*;

(x) Director, Hazardous Substances Management, Ministry of Environment and Forests, *ex officio*;

(xi) Director, National Institute of Occupational Health, *ex officio*;

(xii) one Pharmacologist to be nominated by the Central Government;

(xiii) one medical toxicologist to be nominated by the Central Government;

(xiv) one person who shall be in charge of the department dealing with public health in a State, to be nominated by the Central Government;

(xv) five persons who shall be Directors of Agriculture or Horticulture in States, representing five respective agro-climatic zones, to be nominated by the Central Government;

(xvi) one person to represent the Council of Scientific and Industrial Research, to be nominated by the Central Government; and

(xvii) one ecologist to be nominated by the Central Government.

(3) The Central Government may appoint an officer from the Directorate of Plant Protection as the Member-Secretary to the Board having such qualifications as may be prescribed.

Term of office of nominated members.

5. The person nominated under clauses (xii) to (xviii) of sub-section (2) of section 4 shall, unless their seats become vacant earlier by resignation, death or otherwise, hold office for a period of three years from the date of their nomination but shall be eligible for re-nomination:

Provided that the persons nominated under clauses (vi) to (xi) shall hold office only for so long as they hold the appointments by virtue of which their nominations were made.

Vacancies, etc., not to invalidate proceedings of Board, Registration Committee or any other committee.

6. No act or proceeding of the Board, the Registration Committee or any other committee constituted under this Act, shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Board, the Registration Committee or such committee, as the case may be.

Functions and powers of Board.

7. The matters on which the Board may advise the Central Government and the State Governments shall, *inter alia*, include—

(a) prevention of risk to human beings, animals and environment during the manufacture, sale, storage, transport, distribution, handling and use of pesticides and necessary safety measures and practices relating thereto;

(b) monitoring performance of registered pesticides in improvement of agricultural production;

(c) review of the toxicity and safety of pesticides from time to time;

(d) suggest development and availability of safer alternatives to existing pesticides as per latest global research and development; and

(e) disposal of obsolete, date-expired and banned pesticides.

Procedure, etc., of Board.

8. The Board may, subject to the previous approval of the Central Government, make regulations for the purpose of regulating its procedure and the procedure of any committee thereof and the conduct of all business to be transacted by it or such committee.

Officers and employees of Board and Registration Committee.

9. The Central Government shall provide the Board and the Registration Committee with such technical and other staff, as it considers necessary.

Other Committees and allowances payable to members of Board, Registration Committee and other committees.

10. (1) The Board may constitute such committees as it considers necessary and may appoint to them, persons who are not members of the Board to exercise such powers and perform such duties as may, subject to such conditions, if any, as the Board may impose, be delegated to them by the Board.

(2) The members of the Board, the Registration Committee and other committees shall receive such allowances as may be prescribed.

CHAPTER III

REGISTRATION OF PESTICIDES

Registration Committee and its functions

11. (1) The Central Government shall constitute a Registration Committee consisting of the Chairperson and following *ex officio* members, namely:—

(a) Agriculture Commissioner in the Ministry of Agriculture as Chairperson;

(b) Plant Protection Adviser to the Government of India;

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- (c) Joint Drugs Controller General of India;
- (d) Assistant Director General (Plant Protection), Indian Council of Agricultural Research;
- (e) Director, National Institute of Occupational Health;
- (f) Additional Industrial Adviser (Chemicals), Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers;
- (g) Assistant Director General (Prevention of Food Adulteration), Ministry of Health and Family Welfare;
- (h) Director, Hazardous Substances Management, Ministry of Environment and Forests;
- (i) Director, Industrial Toxicological Research Centre;
- (j) Member-Secretary, Central Pesticide Board as Member-Secretary.

(2) The Registration Committee shall—

(i) register pesticides after scrutinising their formulae and verifying claims made by the importer or the manufacturer or the exporter, as the case may be, as regards their efficacy and safety to human beings, animals and environment;

(ii) allow the continued use or restrict or prohibit the use on reassessment of their safety and availability of safer alternatives;

(iii) specify requirements of necessary infrastructure including machinery, equipment and technically qualified personnel for grant of licence for manufacture and storage of pesticides;

(iv) specify guidelines for the regulation of advertising of pesticides in all media to ensure that it is in accordance with label directions and precautions to be observed in its application;

(v) specify protocols, procedures and good manufacturing practices for manufacture of pesticides;

(vi) maintain a national register of persons engaged in import, manufacture and export of pesticides;

(vii) perform such other functions as are assigned to it by or under this Act; and

(viii) notify the pesticides registered under this Act from time to time; and specify the pesticides having pesticidal properties and its uses in such manner as may be prescribed.

(3) The Registration Committee may co-opt such number of experts and for such purpose or period as it may consider necessary but the expert so co-opted shall have no right to vote.

(4) The Registration Committee may constitute one or more sub-committees consisting of at least three persons who are members of the Committee to exercise such powers and perform functions delegated to them by the Committee, subject to such conditions, if any, as the Committee may impose:

Provided that the sub-committee shall submit details of the decisions taken by them for the ratification by the Registration Committee.

12. (1) Any person desiring to import or manufacture or export any pesticide shall apply to the Registration Committee for the registration of such pesticide and there shall be separate application for each pesticide:

Registration of pesticides.

Provided that the insecticides registered under the provisions of the Insecticides Act, 1968, immediately before the commencement of this Act, shall be deemed to be the registered pesticides under the corresponding provisions of this Act.

(2) Every application under sub-section (1) shall be made in such form and contain such particulars as may be prescribed, including claims regarding expected performance, efficacy and safety along with usage instructions and infrastructure available or proposed to be made available to manufacture and to stock that pesticide.

(3) It shall be the responsibility of all applicants applying for registration to provide complete information on all the known inimical effects of the pesticide on human beings, animals and the environment.

(4) On receipt of the application complete in all respects for the registration of a pesticide, the Committee may, after such enquiry as it considers necessary and after satisfying itself that the pesticide to which the application relates conforms to the claims made by the importer or by the manufacturer or by the exporter, as the case may be, as regards the expected performance and efficacy of the pesticide as well as its safety to human beings, animals and environment, and availability or provision of requisite minimum infrastructure to manufacture and stock that pesticide, register the pesticide on such conditions as may be specified by it and on payment of such fee as may be prescribed and allot a registration number thereto and issue a certificate of registration as a token thereof within a period of two years:

Provided that the Committee may, in exceptional circumstances and for reasons to be recorded in writing, extend the period up to six months.

(5) No pesticide shall be registered for import or manufacture unless its tolerance limit are specified for its residues on crops and commodities under the Food Safety and Standards Act, 2006.

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(6) The data submitted for the purpose of registration in respect of a pesticide under this section which has not been previously registered shall not be relied upon for grant of registration of the same pesticide in respect of any other person for a period of three years.

(7) Subject to sub-section (6), where a pesticide has been granted a patent, the period of non-reliance on data shall be limited to the period of the patent.

Explanation.— The words "not been previously registered" in respect of a pesticide shall include its name or label expansion through "new uses":

Provided that the provisions of non-reliance on data submitted for registration of a pesticide by the first registrant shall be available for the period with effect from the date of the first marketing approval granted anywhere in the world and this shall not apply to the data relating to bio-efficacy and shelf-life part of pesticides where data is to be generated for use under Indian conditions.

(8) Subject to the provisions of sub-section (6), the Central Government may relax or exempt the provision of non-reliance of data submitted for registration of a pesticide by the first registrant in the following circumstances, namely:—

(i) (a) national exigency; or

(b) in cases of urgency; or

(c) public interest; or

(ii) for use by the Government for academic and research purposes.

(9) If the Committee is of the opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not such as can be easily observed or that notwithstanding the observance of such precautions the use of the pesticide involves serious risk to human beings or animals or environment, or that infrastructure to manufacture or stock that pesticide is inadequate, it may refuse to register the pesticide.

(10) Where the Registration Committee is of opinion that the pesticide is being introduced for the first time in India, it may pending an enquiry, register it provisionally for a

period of two years on such conditions as may be specified by it for the purpose of generation of data for making an application under sub-section (1):

Provided that the Central Government may, on the recommendation of the Registration Committee and if no other appropriate pesticide is registered or available, allow commercialization of such pesticide on such conditions as may be specified to meet national exigency.

(11) The Registration Committee may, having regard to the efficacy of the pesticide and its safety to human beings and animals, vary the conditions subject to which a certificate of registration has been granted and may for that purpose require the certificate-holder by giving notice in writing to produce the certificate before it within such time as may be specified in the notice.

(12) Notwithstanding anything contained in this section, where a pesticide has been registered on the application of any person, any other person desiring to import or manufacture the pesticide or engaged in the business of import or manufacture thereof, shall, on application and on payment of prescribed fee, be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the pesticide was registered under sub-section (4):

Provided that registration in respect of a pesticide, data of which cannot be relied upon under sub-section (6) shall not be granted during a period of three years of the date of its registration unless a letter of consent is enclosed with the application, in original, from the registrant of that pesticide.

(13) Subject to the provisions of sub-section (12), the Central Government may allow grant of registration under this sub-section in respect of a pesticide, data of which is not relied upon under sub-section (6) even within the period of three years of the date of registration of such pesticide in the following circumstances, namely:—

- (a) National exigency; or
- (b) in cases of urgency; or
- (c) public interest;

13. (1) If the Registration Committee, either *suo motu* or otherwise, is *prima facie* satisfied of violation of any provision of the Act or the rules framed thereunder, or any of the conditions of certificate of registration, may, after giving an opportunity of hearing to the registrant and for reasons to be recorded in writing, suspend the registration certificate for a period not exceeding three months.

Suspension or
cancellation of
registration.

(2) The certificate of registration issued under section 12 shall be deemed cancelled if the registrant fails to submit a copy of the manufacturing licence and satisfy the Registration Committee of having set up necessary manufacturing facilities and started production of that pesticide within a period of three years in case of manufacture or a copy of the licence to manufacture, stock, distribute or sale within a period of one year in case of import.

(3) The Registration Committee may either itself or through any of its officers, may cause the inspection of the manufacturing premises or processing facility of that registrant with respect to adequacy of infrastructure to manufacture, stock that pesticide and cancel the Certificate of Registration if the infrastructure is found inadequate.

(4) (a) The Registration Committee, having satisfied itself with the adverse impact of a pesticide of a particular registrant on crops, human beings, animals or environment or to minimise the risk of such adverse impact through risk assessment or risk benefit analysis, either on its own motion or on receiving evidence of adverse impact may after giving an opportunity of hearing to the registrant, and for the reasons to be recorded in writing, cancel the registration of that pesticide;

(b) The Registration Committee, having satisfied itself with the evidence that any of the conditions of certificate of registration in respect of a pesticide has been violated, may

after giving an opportunity of hearing to the registrant, and for the reasons to be recorded in writing, cancel the registration of that pesticide.

(5) The Registration Committee at any time, either *suo motu* or on the basis of a complaint, may visit and inspect any manufacturing premises or facilities, or may cause the said manufacturing premises or facility to be visited and inspected through any of its officers and if it is found by way of such inspection that the facility of manufacturing and laboratory thereof are sub-standard or that the capacity is inadequate for manufacture of registered pesticide, such registration shall be cancelled by the Registration Committee, after giving an opportunity of hearing to the registrant and for the reasons to be recorded in writing.

(6) If it is found that the data submitted by the applicant is false or misleading or has been deliberately suppressed, such registration shall be cancelled by the Registration Committee, after having been given an opportunity of hearing to the registrant and for the reasons to be recorded in writing.

Appeal against refusal or suspension or cancellation of registration.

14. Any person aggrieved by a decision of the Registration Committee under section 12 or 13 may, within a period of thirty days from the date on which the decision is communicated to him, appeal in the prescribed manner and on payment of the prescribed fees to the Central Government whose decision thereon shall be final:

Provided that the Central Government may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time:

Provided further that no order under this section shall be made without giving an opportunity of hearing to the applicant.

Power of Central Government to review decision of Registration Committee.

15. The Central Government may, at any time, call the record relating to any case in which the Registration Committee has given a decision under section 12 or 13 for the purpose of satisfying itself as to the grounds for arriving at any such decision and may pass any order in relation thereto as it considers necessary:

Provided that no such order shall be passed after the expiry of a period of one year from the date of decision of the Registration Committee:

Provided further that the Central Government shall not pass any order prejudicial to any person unless that person has been given a reasonable opportunity of being heard.

CHAPTER IV

GRANT OF LICENCES

Licensing officers.

16. The State Government may, by notification in the Official Gazette, appoint such person as it thinks fit to be licensing officers for the purposes of this Act having such qualifications as may be prescribed by the State Government and define the areas in respect of which they shall exercise jurisdiction.

Grant of licence.

17. (1) Any person desiring to manufacture or sell or stock or exhibit for sale or distribute any pesticide or to undertake commercial pest control operations with the use of any pesticide, who himself possesses, or employ a person possessing, such qualifications as may be prescribed, may make an application to the licensing officer for grant of a licence:

Provided that the person except a manufacturer, holding the licence on the date of coming into force of this Act shall be exempted from the condition of himself possessing, or employing a person possessing prescribed qualification, for a period of five years.

(2) Every application under sub-section (1) shall be made in such form and shall contain such particulars as may be prescribed.

(3) On receipt of an application complete in all respect for the grant of a licence, the licensing officer may grant a licence, within a period of three months from the date of receipt

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of the application complete in all respect, in such form, on such conditions and on payment of such fees as may be prescribed.

(4) A licence granted under this section shall be issued for such period, which may be renewed from time to time on payment of such fees, as may be prescribed.

(5) In prescribing fees for the grant or renewal of licences under this section, different fees may be prescribed for the sale or distribution of pesticides for domestic use and for other purposes.

(6) (i) Any persons who intends to manufacture household pesticide shall obtain a separate licence for stocking, distribution or sale of each of the household pesticide.

(ii) Any persons who desires to distribute or stock for distribution household pesticides shall obtain only one licence for stocking or distribution of all the household pesticides.

(iii) A retailer shall not require a licence to sell, stock or exhibit for sale, a household pesticide.

(7) The licensing officer shall—

(a) maintain a register of persons engaged in manufacture, distribution, stocking and sale of pesticides and of persons engaged in commercial pest control operations with the use of any pesticide in such form as may be prescribed;

(b) provide information to the State Government on infrastructure facilities possessed by pesticide manufacturers;

(c) provide information to the State Government on performance of registered pesticides in improving agricultural production; and

(d) provide information to the State Government on the monitoring of the quality of pesticides and the offences and punishment awarded under this Act.

(8) The State Government shall send a report for a period of every six months to the Central Government containing details of information under sub-section (7) in such form as may be prescribed.

18. (1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that—

Revocation, suspension and amendment of licences.

(a) The licence granted under section 17 has been granted because of misrepresentation as to an essential fact; or

(b) the holder of a licence has failed to comply with the conditions subject to which the licence was granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause revoke or suspend the licence.

(2) Subject to any rules that may be made in this behalf, the licensing officer may also vary or amend a licence granted under section 17.

19. A licence to manufacture, sell, stock or exhibit for sale or distribute a pesticide or to undertake commercial pest control operations with the use of that pesticide shall be deemed to be suspended or cancelled, as the case may be, if the certificate of registration of that pesticide is suspended or cancelled by the Registration Committee.

Effect of suspension or cancellation of registration on licence.

20. (1) Any person aggrieved by a decision of a licensing officer under section 17 or section 18 may, within a period of thirty days from the date on which the decision is communicated to him, appeal to such authority in the manner and on payment of such fees as may be prescribed:

Appeal against decision of a licensing officer.

Provided that the appellate authority may entertain an appeal after the expiry of the said period if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Central
Pesticides
Laboratory.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of showing cause, make an endeavour to dispose of the appeal within a period of six months and the decision of the appellate authority thereon shall be final.

21. (1) The Central Government may, by notification in the Official Gazette, establish a Central Pesticides Laboratory under the Control of Director to be appointed by the Central Government to carry out the functions entrusted to it by or under this Act:

Provided that if the Central Government so directs by a notification in the Official Gazette, the functions of the Central Pesticides Laboratory shall, to such extent as may be specified in the notification, be carried out at any such institution as may be specified therein and thereupon the functions of the Director of the Central Pesticides Laboratory shall to the extent so specified, be exercised by the head of that Institution:

Provided further that the Central Government may accredit private laboratories to carry out any or all functions of the Central Pesticides Laboratory on fulfilment of such criteria and procedure as may be prescribed and subject to inspection by, and control of, the Plant Protection Adviser to the Government of India.

(2) No private laboratory, any director or partner or officer of which has any financial interest in the manufacture, import, export, stocking for distribution or sale of any pesticide or pest control operation, shall be accredited under sub-section (1).

(3) Any accreditation granted under sub-section (1) may be withdrawn for the reasons to be recorded in writing and after giving the accredited laboratory an opportunity of being heard and such withdrawal of accreditation shall be conclusive.

CHAPTER V

PROHIBITION OF IMPORT, EXPORT AND MANUFACTURE OF CERTAIN PESTICIDES

Prohibition
of import,
export and
manufacture
of certain
pesticides.

22. (1) No person shall, himself or by any person on his behalf, import, export or manufacture—

- (a) any misbranded, sub-standard or spurious pesticide;
- (b) any pesticide the sale, distribution or use of which is for the time being prohibited under section 33;
- (c) any pesticide except in accordance with the condition on which it was registered; and
- (d) any pesticide in contravention of any other provision of this Act or of any rule made thereunder.

(2) No person shall, himself or by any person on his behalf, manufacture any pesticide except under, and in accordance with the conditions of a licence issued for such purpose under this Act.

(3) No person shall, himself or by any person on his behalf, import any pesticide from, or export any pesticide to, any country in contravention of the provisions of the Prior Informed Consent Procedure specified for certain hazardous chemicals and pesticides in international trade.

Prohibition of
sale, etc., of
certain
pesticides.

23. (1) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale, distribute, transport, use, or cause to be used by any worker—

- (a) any pesticide which is not registered under this Act;
- (b) any pesticide, the sale, distribution or use of which is for the time being prohibited under section 33;
- (c) any pesticide in contravention of any other provision of this Act or of any rule made thereunder;

(d) any pesticide in a packing other than its original packing in which it was primarily packed by the manufacturer;

(e) any pesticide which has outlived its shelf-life as evident from its label; and

(f) any pesticide without disclosing its expected performance as claimed and usage instructions as suggested by the manufacturer or importer, as the case may be, while applying for grant of certificate of registration under section 12.

(2) No person shall—

(i) transport, or cause to be transported, any pesticide, which is registered in India only for the purpose of export, within the country except directly between the premises of manufacture for which the licence has been obtained and the port of exit; or

(ii) distribute, sell or exhibit for sale, or use or caused to be used any pesticide within the country, which is registered in India only for the purpose of export.

(3) No person shall, himself or by any person on his behalf, sell, stock or exhibit for sale or distribute or use for commercial pest control operations any pesticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

CHAPTER VI

ANALYSIS OF PESTICIDES

24. The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, possessing such technical and other qualifications as may be prescribed, to be pesticide Analysts for such areas and in respect of such pesticides or class of pesticides as may be specified in the notification:

Pesticide analysts.

Provided that no person who has any financial interest in the manufacture or import or export or sale of any pesticide, shall be appointed as Pesticide Analysts.

25. The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, possessing such technical and other qualifications as may be prescribed, to be Pesticide Inspectors for such areas as may be specified in the notification:

Pesticides inspectors.

Provided that no person who has any financial interest in the manufacture or import or export or sale of any pesticide shall be appointed as Pesticide Inspector.

26. (1) A Pesticide Inspector shall have power—

Power of Pesticide inspectors.

(a) to enter and search, at all reasonable times and with such assistance, if any, as he considers necessary, any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed; or for the purpose of satisfying himself that the provisions of this Act or the rules made thereunder or the conditions of any certificate of registration or licence issued thereunder are being complied with;

(b) to require the production of, and to inspect, examine and make copies of, or take extracts from registers, records or any other documents kept by a manufacturer, distributor, carrier, dealer or any other person in pursuance of the provisions of this Act or the rules made thereunder and seize the same, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;

(c) to make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or the rules made thereunder are being complied with and for that purpose stop any vehicle;

(d) to stop, with the permission of the Executive Magistrate, the distribution, sale or use of a pesticide which he has reason to believe is being distributed or sold or

used in commercial pest control operations in contravention of the provisions of this Act, or the rules made thereunder, till the receipt of the report of the Pesticide Analyst under sub-section (1) of section 30:

Provided that if the Pesticide Inspector has not been able to take prior permission due to emergent circumstances, he shall, as soon as may be but not later than forty-eight hours, inform the Executive Magistrate and take his orders to stop the sale of any pesticide;

(e) to take samples of any pesticide and send such samples within forty-eight hours for test and analysis to the Pesticide Analyst in such manner as may be prescribed; and

(f) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made thereunder.

(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code. 2 of 1974.

Powers to
Customs.

27. Notwithstanding anything contained in section 26, any customs officer, shall on his own volition or on receiving a written complaint about unlawful import or export of any pesticide also have the powers of a Pesticide Inspector, specified under section 26 and take action as per provisions of this Act.

Procedure to
be followed by
Pesticide
Inspectors.

28. (1) Where a Pesticide Inspector seizes any record, register or document under clause (b) of sub-section (1) of section 26, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

(2) Where a Pesticide Inspector takes any action under clause (d) of sub-section (1) of section 26—

(a) he shall use all reasoning in ascertaining whether or not the pesticide or its sale, distribution or use contravenes any of the provisions of section 23 and if it is ascertained that the pesticide or its sale, distribution or use does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock seized;

(b) if he seizes the stock of the pesticide he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged contravention be such that the defect may be remedied by the possessor of the pesticide, he shall, on being satisfied that the defect has been so remedied, forthwith revoke his order and in case where the Pesticide Inspector has seized the stock of pesticide, he shall, as soon as may be, inform a Magistrate and obtain his orders as to the release thereof.

(3) Where a Pesticide Inspector takes any sample of a pesticide, he shall issue a receipt therefor stating therein that the fair price of such sample shall be tendered by cheque if the sample, after test or analysis is not found to be misbranded, sub-standard or spurious and the Pesticide Analyst has reported to that effect and on such price having been tendered may require a written acknowledgement therefor.

(4) Where a Pesticide Inspector seizes the stock of any pesticide under clause (d) of sub-section (1) of section 26, he shall tender a receipt therefor in the prescribed form.

(5) Where a Pesticide Inspector takes a sample of a pesticide for the purpose of test or analysis, he shall intimate such purpose in writing in the prescribed form to the person from whom he takes it and, in the presence of such person unless he wilfully absents himself, shall draw the sample and divide it into three portions, each of 250 millilitre of volume or 250 gram of weight, in simulated containers or glass bottles, in case of a liquid pesticide or polythene bags in case of solid pesticide from the containers carrying more than one litre of volume or one kilogram of weight, and effectively seal and suitably mark the same and permit such

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person to add his own seal and mark to all or any of the portions so sealed and marked and also put his seal on the package from which the sample is drawn indicating the quantity of sample drawn for test or analysis:

Provided further that where the pesticide is made up in containers carrying up to one litre in volume or one kilogram of weight, instead of dividing a sample as aforesaid, the Pesticide Inspector shall take three of the said containers after suitably marking the same and sealing them.

(6) The Pesticide Inspector shall dispose of the sample so divided or containers, as the case may be, as follows:—

(i) one portion or container, he shall restore to the person from whom he takes it, who may use it for test or analysis for adducing evidence in controversion of the report of the Pesticide Analyst under sub-section (3) of section 30;

(ii) one portion or container, he shall send to the Pesticide Analyst within forty-eight hours for test or analysis under sub-section (1) of section 30; and

(iii) one portion or container, he shall send within forty-eight hours to be deposited with the Director (Agriculture) in respect of Pesticide Inspectors notified by the State Government or the Plant Protection Adviser to the Government of India in respect of Pesticide Inspectors, notified by the Central Government, for producing to the court before which proceedings, if any, are instituted in respect of the pesticide for test or analysis under sub-section (4) of section 30.

(7) The remains of the samples so drawn and tested shall be disposed of in the manner prescribed under section 52 after three years or the pendency of the proceedings before the court, whichever is earlier.

29. Every person for the time being in charge of any premises where any pesticide is being manufactured or is kept for sale or distribution shall, on being required by a Pesticide Inspector so to do, disclose the place where the pesticide is being manufactured or is kept, as the case may be.

Persons bound to disclose place where pesticides are manufactured or kept.

30. (1) The Pesticide Analyst to whom a sample of any pesticide has been submitted for test or analysis under clause (ii) of sub-section (6) of section 28, shall, within a period of forty-five days, deliver to the Pesticide Inspector a signed report in triplicate in the prescribed form.

Report of Pesticide Analyst.

(2) The Pesticide Inspector on receipt thereof shall, within a period of fifteen days, deliver two copies of the report to the person from whom the sample was taken, who shall deliver one copy to the manufacturer of that pesticide, and retain one copy for use in any prosecution in respect of the sample.

(3) Report signed by the Pesticide Analyst shall be the evidence of the fact stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within a period of twenty-eight days of receipt of the report, notified in writing, the Pesticide Inspector or the court before which any proceeding in respect of the sample is pending that he intends to adduce evidence controverting the report.

(4) Unless the sample has already been tested or analysed in the Central Pesticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Pesticide Analyst's report, the court may, in its discretion or on the request, of the complainant or the accused, cause the sample of the pesticide produced before the magistrate under clause (iii) of sub-section (6) of section 28 to be sent for test or analysis to the said laboratory.

(5) On receipt of the sample of pesticide under sub-section (4), the laboratory shall, within a period of thirty days, carry out the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Pesticides Laboratory the result thereof, and such report shall be conclusive evidence of the fact stated therein.

(6) The cost of a test or analysis made by the Central Pesticides Laboratory under sub-section (5) shall be paid by the complainant or the accused, as the court may direct.

Confiscation.

31. (1) Where any person has been convicted under this Act for contravening any of the provisions of this Act or of the rules made thereunder, the stock of the batch of the pesticide in respect of which the contravention has been made shall be liable to confiscation.

(2) Without prejudice to the provisions contained in sub-section (1) where the court is satisfied on the application of a Pesticide Inspector or otherwise and after such inquiry as may be necessary, that the pesticide is misbranded, sub-standard or spurious, such pesticide shall be liable to confiscation.

Notification of poisoning.

32. (1) The State Government may, by notification in the Official Gazette, require any person or class of persons specified therein to report all occurrences of poisoning (through the use or handling of any pesticide) coming within his or their cognizance to such officer as may be specified in the said notification.

(2) The State Government shall also submit a copy of the report on occurrences of poisoning to the Central Government on quarterly basis.

Prohibition of sale, etc., of pesticides for reasons of public safety.

33. (1) If, on receipt of a report under section 32 or otherwise, the Central Government or the State Government is of the opinion, for reasons to be recorded in writing, that the use of any pesticide specified in clause (j) or clause (s) of section 3 or any specific batch thereof is likely to involve such risk to human beings or animals as to render it expedient or necessary to take immediate action, then, that Government may, by notification in the Official Gazette, prohibit the sale, distribution or use of the pesticide or batch in such area, to such extent and for such period not exceeding one hundred and eighty days as may be specified in the notification pending investigation into the matter:

Provided that where the investigation is not completed within the said period, the Central Government, or as the case may be, the State Government with prior approval of the Central Government, may extend it by such further period not exceeding sixty days in aggregate as it may specify in a like manner.

(2) If, as a result of its own investigation or on receipt of the report from the State Government, and after consultation with the Registration Committee, the Central Government is satisfied that the use of the said pesticide or batch is likely to cause any risk, it may pass such order including an order refusing to register the pesticide or canceling the certificate of registration, if any, granted in respect thereof, as it deems fit, depending on the circumstances of the case.

Notification of cancellation of registration, etc.

34. A refusal to register any pesticide or a cancellation of a certificate of registration of any pesticide shall be notified in the Official Gazette and in such other manner as may be prescribed.

CHAPTER VII

OFFENCES AND PUNISHMENT

Punishment for use of pesticide in contravention of Act.

35. whoever uses or causes to use a pesticide in contravention of any provision of this Act or any rule made thereunder shall be punishable with a fine which shall not be less than twenty-five thousand rupees but which may extend to fifty thousand rupees or with imprisonment for a term which may extend to six months, or with both.

Punishment for obstruction.

36. Whoever obstructs a Pesticide Inspector, or an officer exercising the power of the Pesticide Inspector, in the exercise of his powers or discharge of his duties under this Act or the rules made thereunder shall be liable to a penalty which may extend to twenty-five thousand rupees.

Punishment for misbranded pesticide.

37. Whoever imports, exports, manufactures, sells, stocks, or exhibits for sale or distributes any misbranded pesticide shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or with imprisonment for a term, which may extend to one year, or with both.

38. Whoever—

(a) imports, exports, manufactures, sells, stocks, or exhibits for sale or distributes any sub-standard pesticide; or

(b) imports or exports any pesticide in contravention of sub-section (3) of section 22,

shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with imprisonment for a term which may extend to two years, or with both.

Punishment
for sub-
standard
pesticide.

39. (1) Whoever—

(a) imports or manufactures any pesticide without a certificate of registration; or

(b) manufactures, sells, stocks or exhibits for sale or stocks for pest control operation or distributes a pesticide without a valid licence; except the retailer for sales, stocking or exhibiting for sale any household pesticide; or

(c) imports, manufactures, sells stocks or exhibits for sale or distributes any spurious pesticide; or

(d) imports, manufactures, sells, stocks, or exhibits for sale or distributes any pesticide which is ineffective on particular crop for which it is intended to be used as approved by the Registration Committee or is phyto-toxic to that crop, or if it has a toxicity which is higher than the level specified; or

(e) sells, stocks or distributes a pesticide in contravention of section 33; or

(f) causes a pesticide, the use of which has been prohibited under section 33 to be used by any worker; or

(g) sells, stocks or exhibits for sale or distributes or stocks for pest control operation any pesticide which is in contravention of provisions of section 23,

shall be punishable with fine which shall not be less than five lakh rupees but which may extend to ten lakh rupees or with imprisonment for a term which may extend to five years, or with both in addition to cancellation of licence, wherever applicable, and sealing of manufacturing premises.

Punishment in
certain cases.

(2) Whoever contravenes any other provisions of this Act or rule made thereunder or any condition of a certificate of registration or licence granted thereunder or fails to perform as per the claims of efficacy and safety, made under sub-section (2) of section 12 at the time of registration, shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year, or with both.

40. If any person convicted of an offence under this Act commits a like offence afterwards, it shall be lawful for the court before which a conviction takes place to cause the offenders name and place of residence, the offence and the penalty imposed, to be published in such newspapers or in such other manner as the court may direct.

Publication of
name, etc., of
offender.

41. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Defences
which may or
may not be
allowed in
prosecution
under this Act.

42. (1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the pesticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such pesticide or of the circumstances of its manufacture or import.

(2) For the purposes of section 22, a pesticide shall not be deemed to be misbranded, sub-standard or spurious only by reason of the fact that there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the pesticide and not to increase the bulk, weight or measure of the pesticide or to conceal its inferior quality or other defect.

(3) A person not being an importer or a manufacturer of a pesticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves—

(a) that he acquired the pesticide from an importer or a duly licenced manufacturer, distributor or dealer thereof; and

(b) that the pesticide, while in his possession, was properly stored and remained in the same state in which he acquired it.

Cognizance
and trial of
offences.

43. (1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of the State Government or a person authorised in this behalf by the State Government.

(2) No court inferior to that of a metropolitan magistrate or a judicial magistrate of first class shall try any offence under this Act.

Special Courts.

44. (1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the Official Gazette and after consultation with the High Court, notify one or more courts of judicial magistrates of first class, or as the case may be, a metropolitan magistrate, in such district or metropolitan area to be special courts for the purposes of this Act.

(2) Unless otherwise directed by the High Court, a court notified under sub-section (1), shall exercise jurisdiction only in respect of cases under this Act.

(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of the special court notified under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.

(4) Subject to the foregoing provisions of this section, a special court notified under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall apply accordingly in relation to such courts.

CHAPTER VIII

MISCELLANEOUS

45. The Central Government may give such directions, as it may deem necessary, to a State Government or the Board for carrying out all or any of the provisions of this Act and the State Government, or as the case may be, the Board, shall comply with such directions.

Power of Central Government to give directions to State Governments.

46. The members and the officers of the Board and the Registration Committee and the Pesticide Inspector or an officer exercising the power of the Pesticide Inspector shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act or the rules made thereunder, to be public servants within the meaning of section 21 of the Indian Penal Code.

Members and officers of Board and Registration Committee and Pesticide Inspector to be public servants.

47. No prosecution, suit or other proceeding shall lie against the Government, or any officer of the Government, or the Board, the Registration Committee or any committee of the Board, for anything in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

48. (1) The Central Government may, after consultation with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the provisions of this Act:

Power of Central Government to make rules.

Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government, shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the manner of notifying the registered pesticides and specifying the pesticides having pesticidal properties and its use under clause (viii) of sub-section (2) of section 11;

(b) the form and particulars of making application for registration of pesticides under sub-section (1), fee for its registration under sub-sections (4) and (12) and the matters of public interest for exemption of non-reliance of data under sub-section (13) of section 12;

(c) the manner of making appeal and payment of fee thereon to the Central Government against the decision of the Registration Committee under section 14;

(d) the form of application for the grant of licence and the particulars relating thereto under sub-section (2); the form of licence, the conditions attached thereto and the fee payable therefor under sub-section (3); the period for which a licence may be renewed and the fee for such renewal under sub-section (4); the form of register to be maintained by the licensing office under sub-section (7); the form of report to be submitted by the State Government under sub-section (8) of section 17;

(e) the circumstances in which a licence may be varied or amended under sub-section (2) of section 18;

(f) the authority to, and the manner in, and the fee on payment of which, an appeal may be filed under section 20 and the procedure to be followed by the appellate authority in disposing of the appeal;

(g) the qualifications, powers and duties of an Pesticide Analyst and an Pesticide Inspector;

(h) the manner of taking samples of any pesticide testing of such samples and the fee payable therefor;

(i) the form of tendering receipt under sub-section (4) and the form in which intimation shall be given by an Pesticide Inspector under sub-section (5) of section 28 to a person from whom a sample of a pesticide is taken for test of analysis;

(j) the form in which a Pesticide Analyst shall submit a report of his test or analysis to the Pesticide Inspector under sub-section (1) of section 30;

(k) the manner in which refusal to registration of a pesticide or cancellation of certificate of registration thereof may be notified;

(l) the officer or authority to whom the Central Government may delegate any of the powers and functions conferred on it by this Act;

(m) provide for the exemption, conditionally or otherwise, from all or any of the provisions or the rules (except relating to registration, manufacture and quality control) for retailers and stockist in respect of the category of household pesticide;

(n) the manner and time of segregation and disposal of pesticides of a batch which has outlived its shelf-life or has been declared misbranded, sub-standard or spurious or has been banned; and

(o) any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

49. (1) The State Government may, after consultation with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act and not inconsistent with the rules, if any, made by the Central Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the qualifications of the licensing officer under section 16;

(b) the authority to which, the manner in which, and the fee on payment of which, an appeal may be filed under section 20 and the procedure to be followed by the appellate authority in disposing of the appeal; and

(c) the delegation of any of the powers and functions conferred by this Act on the State Government to any officer or authority specified by that Government.

(3) Every rule made by the State Government under this section shall be laid as soon as it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

Exemption in certain cases.

50. (1) (a) Nothing in this Act shall apply to the use of any pesticide by any person for his own household purposes or for garden or in respect of any land under his cultivation;

(b) The Central Government may, on the recommendation of the Registration Committee and subject to such conditions as it may specify therein, exempt from any or all provisions of this Act any substance having pesticidal properties or any preparation containing any one or more such substances, if such substance or preparation is intended for the purpose other than those mentioned under clause (j) or (s) of section 3.

(2) The central Government may, by notification in the Official Gazette, and subject to such conditions, if any, as it may specify therein, exempt from all or any of the provisions of this Act or the rules made thereunder, any educational, scientific or research organisation engaged in carrying out experiments with pesticide.

51. Every pesticide sold to a farmer, producer, stockist, distributor, retailer or pest control operator, as the case may be, shall disclose the expected performance, efficacy or safety of such pesticide under given conditions, and if the pesticide fails to provide the expected performance or causes any harm to human or animal health or damage to the environment by use of that pesticide, then, the farmer or the affected person may claim compensation from the manufacturer or distributor or stockist or retailer or pest control operator, as the case may be, under the provisions of the Consumer Protection Act, 1986.

Compensation
to farmer or
affected
person.

68 of 1986.

52. A batch of a pesticide that has outlived its shelf-life; or a batch that has been declared to be misbranded, sub-standard or spurious or has been banned shall, within a period of three months, be segregated and disposed of in such manner which is safe for human beings, animals and environment as may be prescribed:

Segregation
and disposal of
pesticides.

Provided that the remains of samples of pesticides drawn by the Pesticide Inspector and tested shall also be disposed of in a similar manner after the period as may be prescribed.

46 of 1968.

53. (1) The Insecticides Act, 1968, is hereby repealed.

Repeal and
savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.

54. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary, for removing the difficulty:

Power to
remove
difficulties.

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

In the overall agricultural development of the country, the pesticides play an important role in sustaining the agricultural production by protecting all kinds of crops from pest attack and reducing the growth of pest population. Pesticides are also useful in health programmes for controlling vectors responsible for diseases, like, malaria. As the pesticides have toxic properties, therefore, they need a well ordered system of management and regulation encompassing all stages in their life-cycle, from import or production to sale and disposal.

2. The Insecticides Act, 1968 was enacted to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals, and to ensure use of efficacious insecticides. However, during the years some deficiencies were noticed in its working which were also observed by different Parliamentary Committees and stakeholders. The provisions of the Act were found to be insufficient to cover certain aspects such as the restrictive definition of 'insecticide' which does not regulate substances being used as pesticides but not included in the Schedule to the Act. Similarly, other areas requiring immediate consideration are: (i) definition of 'manufacture'; (ii) qualification for manufactures, sellers, stockists and commercial pest control operators; (iii) larger representation of experts in the Central Pesticides Board and the Registration Committee; (iv) fixation of tolerance limits of pesticides as a pre-condition of their registration; (v) suspension or cancellation of registration of pesticides on account of violations of the Act, or risk to crops, human beings and environment; and (vi) inadequate penalties and fines for contravention of the provisions of the Act.

3. The National Policy for Farmers brought out in 2007 states that "the development, introduction and diffusion of environmentally safe and effective pesticides will be given priority" while "suitable quality control, safety evaluation and other regulatory system would be strengthened". The policy highlights the need for "incorporating the use of chemical pesticides in an Integrated Pest Management System". The policy also states that "the sale of spurious and sub-standard pesticides would be prevented and bio-pesticides would be promoted". Various Parliamentary Committees recommended stringent and deterrent punishment for manufacturers/sellers of spurious insecticides and the necessity of fixing of maximum residue limits for registration of pesticides.

4. In this background, the need was left for a new legislation to provide for better management of pesticides to respond to the need for faster agricultural growth. Also, the manufacture of quality, safe and affordable pesticides need to be encouraged while spurious and poor quality pesticides be stringently curbed. With this in view, it is proposed to replace the Insecticides Act, 1968 by a new legislation, the Pesticides Management Bill, 2008. The proposed legislation shall *inter alia* provide for the following, namely:—

(i) to rename it as 'pesticides' which has a broader connotation and includes insecticides, fungicides, herbicides, rodenticides, molluscicides, acaricides;

(ii) to provide for an elaborate definition of pesticides to cover any substance of chemical or biological origin intended for preventing, destroying, repelling or mitigating or controlling any pest including unwanted species of plants or animals which will enable regulation of existing pesticides as well as new discoveries;

(iii) address all aspects of development, regulation and quality monitoring, production, management, packaging, labeling, distribution, handling, application, use and control, including post-registration activities and disposal of all types of pesticides;

(iv) define household pesticides, to prohibit their field applications and to enable delicensing of their retail sale for easy availability to the consumer;

(v) effective and efficient working of the Central Pesticides Board, Registration Committee;

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- (vi) fixation of tolerance limits of pesticides as pre-requisite to registration;
- (vii) requirement of minimum qualification of licensees;
- (viii) accredit private laboratories to carry out any or all functions of the Central Pesticides Laboratory;
- (ix) prescribe an elaborate procedure for drawal of pesticide samples and inspection of pesticides;
- (x) make punishments more stringent to check production and sale of misbranded, sub-standard and spurious pesticides;
- (xi) the disposal of date expired, misbranded, sub-standard and spurious pesticides in an environment friendly and safe manner.

5. The Bill seeks to achieve the above objectives.

SHARAD PAWAR.

Notes on Clauses

Clause 1 provides for short title, extent and commencement of the Bill.

Clause 2 provides that the provisions of the Bill shall be in addition to, and not in derogation of, any other law for the time being in force.

Clause 3 provides for the definition of the certain words and expressions used in various provisions of the Bill. These expressions *inter alia* include the expressions, environment, household pesticide, label, manufacture, misbranded, pesticide, substandard, spurious *etc.*

Clause 4 provides for constitution of the Central Pesticide Board for the purpose of advising the Government on scientific and technical matters arising out of administration of the Bill and to carry out the functions assigned to it. It also makes provisions for composition of the board with the Director General of Health Services as its Chairperson and thirty-seven members from various Ministries/Departments of the Central Government, Laboratories, Institutions, *etc.*, and it also provides that the Central Government may appoint an officer having prescribed qualifications from the Directorate of Plant Protection Quarantine and Storage as a Member Secretary to the Board.

Clause 5 provides that tenure of members nominated under clauses (xii) to (xvii) of sub-section 2 of section 4 shall be three years from the date of their nomination and they shall be eligible for re-nomination. It also provides that members nominated under clause (vi) to (xi) shall hold office only for the period till they hold the office by virtue of which they have been nominated.

Clause 6 provides that proceedings of the Board, Registration Committee or any other Committee shall not be called in question on the ground of existence of any vacancy in, or any defect in their constitution.

Clause 7 enumerates the matters on which the Board may advise the Government which include prevention of risk to human beings, animals and environment during the manufacture, sale, storage, transport, distribution, handling and use of pesticides and necessary safety measures and practices relating thereto; monitoring performance of registered pesticides; review of toxicity and safety of pesticides; suggest development and availability of safer alternatives to existing pesticides and disposal of obsolete pesticides.

Clause 8 makes provisions for making regulations by the Board subject to the previous approval of the Central Government for the purpose of regulating its procedure and procedure of any committee thereof and conduct of all business to be transacted by it or such committee.

Clause 9 provides that the Central Government shall provide such technical and other staff as it consider necessary to the Board and the Registration Committee.

Clause 10 empowers the Board to constitute such committees as it considers necessary and appoint in such committees persons who are not members of the Board to exercise such powers and perform such duties as may be delegated to them by the Board. The Board may also impose certain conditions on such committees. It also makes provision that members of the Board and Registration Committee shall receive such allowances as may be prescribed.

Clause 11 provides for constitution of Registration Committee consisting of Agriculture Commissioner in the Ministry of Agriculture as Chairperson and Member Secretary of the Central Pesticides Board as its Member Secretary and eight other *ex officio* members. It also provides for various functions of the Registration Committee. This clause also empowers the Registration Committee to co-opt experts for such purpose or period as it may consider necessary and may constitute one or more sub-committees consisting of atleast three members of the Committee and delegate them such powers and functions subject to such conditions, if any, as it may consider necessary.

Clause 12 seeks to make provisions relating to registration of pesticides. It provides that any person may make separate application for registration of each pesticide for its import, manufacture or export. It also provides that pesticides which are registered under the provisions of Insecticides Act, 1968 shall be deemed to have been registered under the corresponding provisions of the Bill. It also imposes the responsibility on the applicant for registration to provide complete information on all the known inimical effects of the pesticide on human beings, animals and environment. It also provides that after receipt of application complete in all respects the Registration Committee within a period of two years after making such enquiry as it considers necessary and after satisfying itself that the claim made by the applicant as regard to expected performance and efficacy of the pesticide as well as its safety to human beings, animals and environment, and availability or provision of requisite minimum infrastructure to manufacture and stock the pesticide may register such pesticide, and allot a registration number thereto and issue a certificate of registration.

It also provides that no pesticide shall be registered for import or manufacture unless its tolerance limits are specified for its residues on crops and commodities under the Food Safety and Standards Act, 2006. It also makes provisions for non-reliance on data which means that the data submitted for the purpose of registration of a pesticide which has not been previously registered shall not be relied upon for registration of the same pesticide by any other person for the period of three years or if the pesticide has been granted a patent then for a period of the patent. It also empowers the Central Government to relax or exempt the said provision of the non-reliance on data in case of national exigency or in case of public interest or for the use by Government or academic and research purpose.

Clause 13 makes provision for suspension or cancellation of registration of pesticides. It provides that the Registration Committee either *suo motto* or otherwise if *prima-facie* satisfied of violation of any provision of the Bill or the rules made thereunder or any condition of the registration may after giving an opportunity of hearing to the registrant and for the reasons to be recorded in writing, suspend the registration of a pesticide for a period not exceeding three months. It further provides that if registrant fails to submit copy of manufacturing licence and satisfy the Registration Committee of having set up necessary manufacturing facilities and starting manufacture the pesticide within a specified period, the certificate of registration shall be deemed to have been cancelled. It also makes provision relating to inspection of manufacturing premises or facilities, *etc.*, by the Registration Committee or through its officers.

Clause 14 provides that any person aggrieved by the decision of the Registration Committee under clause 12 or 13 may appeal within a period of 30 days to the Central Government in the prescribed manner and on payment of prescribed fees. The decision of the Central Government thereon shall be final. It also empowers the Central Government to entertain an appeal under this clause after the expiry of the said period, if it is satisfied that the appellant was prevented by the sufficient cause for filing of appeal on time. It also provides that no order shall be made under this clause without giving an opportunity of hearing to the applicant.

Clause 15 empowers the Central Government to call for the record relating to any case where Registration Committee has given any decision under clause 12 or 13 and may pass any order as it considers necessary. It also provides that any order shall be passed within a period of one year from the date of decision of Registration Committee and Central Government shall not pass any order prejudicial to any person unless that person has been given a reasonable opportunity of being heard.

Clause 16 empowers the State Government to appoint such persons having prescribed qualifications as it thinks fit to be licencing officers for the purposes of the Bill and may define areas in which they shall exercise their jurisdiction.

Clause 17 makes provision for grant of licence. It provides that any person who himself possesses or employs a person possessing prescribed qualification may make application in

such form and containing such particulars as may be prescribed for grant of licence to manufacture, sell, stock or exhibit for sale or distribute any pesticide or to undertake commercial pest control operations with the use of any pesticide. It also provides that licensing officer may grant the licence within a period of three months from the date of receipt of application complete in all respects in such forms and on such conditions and on payment of such fees as may be prescribed for such period which may be renewed from time to time on payment of such fees as may be prescribed. It exempts the retailers from requirement of licence for sell, stock or exhibit for sale of a household pesticide. This clause also requires the licensing officer to maintain a register of persons engaged in manufacture, distribution or stocking and sale of pesticide and of persons engaged in commercial pest control operations; to provide information to the State Government on infrastructure facility possessed by pesticide manufacturer and on performance of registered pesticides in improving agricultural production and on the monitoring of the quality of pesticides and offences and punishment awarded under the Bill. It also requires the State Government to send a report in prescribed form containing above referred information to the Central Government for a period of every six months.

Clause 18 makes provision for revocation, suspension and amendment of licences. It provides that a licensing officer either on a reference made to him or otherwise may after giving the licence holder, an opportunity of showing cause revoke or suspend the licence on the ground that licence was granted because of misrepresentation or the holder of the licence has failed to comply with the conditions of licence or has contravened the provision of the Bill or the rules made thereunder. It also empowers the licensing officer to vary or amend the licence.

Clause 19 provides that if a certificate of registration of a pesticide is suspended or cancelled by the Registration Committee the licence granted in respect to that pesticide relating to manufacture, sell or exhibit for sale or distribute a pesticide or undertake commercial pest operations with the use of that pesticide shall be deemed to be suspended or cancelled, as the case may be.

Clause 20 provides that any person aggrieved by the decision of a licensing officer under clause 17 or 18 may appeal within a period of 30 days from the date on which the decision was communicated to him to the authority in such manner and on payment of such fees as may be prescribed. It also empowers the appellate authority to entertain such appeal after the expiry of the said period if it satisfied that appellant was prevented by sufficient cause from filing of appeal. It also requires the appellate authority to make an endeavour to dispose of the appeal within a period of six months after giving the appellant an opportunity of showing cause.

Clause 21 empowers the Central Government to establish a Central Pesticides Laboratory under the control of Director to be appointed by Central Government to carry out the functions entrusted to it by or under the Bill. It also empowers the Central Government to entrust the functions of the laboratory to any other institution or the function of the Director of the Central Pesticides Laboratory to the head of such institution to the extent as may be specified in the notification published in the Official Gazette. It also authorises the Central Government to accredit private laboratories to carry out all or any of the functions of the Central Pesticides Laboratory on fulfillment of prescribed criteria and procedures subject to inspection by and control of the Plant Protection Adviser to the Government of India. It also prohibits from accreditation of any laboratory in which any Director or partner or official has any financial interest in the manufacture, import, export, stocking, for distribution or sale of any pesticide or pest control operation. Any accreditation granted under this clause may be withdrawn after communicating to the accredited laboratory reasons for such withdrawal in writing and giving it an opportunity of being heard.

Clause 22 prohibits import, export or manufacture of pesticides which are misbranded, substandard or spurious or of which the sale, distribution or use is for the time being prohibited or which is not in accordance with the conditions on which it was registered or

which contravenes any provision of the Bill or the rule made thereunder. It also provides that any pesticide shall not be manufactured except under and in accordance with the condition of licence issued for the purpose. It also provides that any pesticide shall not be imported or exported to any country in contravention of the provisions of the prior informed consent procedure specified for certain hazardous chemicals and pesticides in international trade.

Clause 23 provides for prohibition of sell, stock or exhibition for sale, distribution, transportation, use *etc.*, of any pesticide which is not registered, or sale, distribution or use of which is prohibited, or which contravenes the provisions of the Bill or rules made thereunder, or is repacked from its original packing which has outlived its shelf-life or which does not disclose its expected performance as explained while applying for grant of registration. It also prohibits distribution, sale, use, *etc.*, of pesticide within the country which is registered only for the purpose of export.

Clause 24 provides that Central Government or State Government may appoint such persons who possess prescribed technical and other qualifications, to be the pesticide analyst for the areas and in respect of such pesticide or class of pesticide as may be mentioned in the notification published in the Official Gazette. It also prohibits appointment of any person as pesticide analyst who has any financial interest in respect of any pesticide.

Clause 25 provides that Central Government or State Government may appoint such persons who possess prescribed technical and other qualifications, to be the pesticide inspector for the areas and in respect of such pesticide or class of pesticides as may be mentioned in the notification published in the Official Gazette. It also prohibits appointment of any person as pesticide inspector who has any financial interest in respect of any pesticide.

Clause 26 provides powers of pesticide inspectors. It provides that a pesticide inspector may enter and search any premises in which he has reason to believe that an offence under the provisions of the Bill or rules made thereunder has been or is being committed for the purpose of satisfying himself that the provisions of the Bill or rule made thereunder or conditions of the registration or licence are being complied with. It also empowers the inspector to ask for production, inspection, examination and copies of records, registers, documents from the manufacturer, distributor, carrier, dealer or any person and may seize the same if he has reasons to believe that all or any of them may furnish evidence of the commission of any offence under the Bill or the rules made thereunder. It also provides that pesticide inspectors may stop with the permission of Executive Magistrate the distribution, sale, use of pesticide which is being distributed or sold or used in commercial pest control operation in contravention of the provisions of the Bill or the rules. It also empowers the pesticide inspectors to take samples of any pesticide and send them within a period of 48 hours for test and analysis to the pesticide analyst in prescribed manner. This clause provides that the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply to any search and seizure under the provisions of the Bill.

Clause 27 provides that any customs officer shall have the powers of pesticide inspectors in relation to import or export of pesticides.

Clause 28 enumerates the procedure to be followed by the pesticide inspector while exercising powers under the Bill. It provides that where any pesticide inspector seizes any record, register or document, he shall as soon as may be inform the Magistrate and take his orders for custody thereon. It provides that when a pesticide inspector takes any sample of pesticide he shall issue a receipt thereof and mention therein if sample on test or analysis is not found misbranded, substandard or spurious, the price of the same shall be tendered and in case he seizes stock of a pesticide he shall tender receipt in prescribed form. It also provides that where pesticide inspector takes a sample of any pesticide he shall intimate such purpose in writing to the person from which sample is taken and shall draw the sample and divide it in three portions and seal effectively and mark the same and permit the person to add his own seal and mark. It requires pesticide inspector to send one portion of the sample to the pesticide analyst within a period of 48 hours for test and analysis and deposit one portion

with the Director, Agriculture or as the case may be the Plant Protection Adviser to the Government of India and give one portion to the person from whom sample was taken.

Clause 29 provides that every person in charge of premises where any pesticide is being manufactured or is kept for sale or distribution, *etc.*, shall disclose to a pesticide inspector on being required by him the place where pesticide is being manufactured or kept.

Clause 30 deals with the manner of report by pesticide analyst. It provides that pesticide analyst within a period of forty-five days deliver his report in triplicate in prescribed form to pesticide inspector, thereafter pesticide inspector within a period of fifteen days deliver two copies of report to the person from whom sample was taken who shall forward one copy to the manufacturer of the pesticide. It provides that the signed report of the pesticide analyst shall be evidence of the fact stated therein and such evidence shall be conclusive unless the person from whom sample was taken notifies, in writing within a period of twenty-eight days to pesticide inspector or the court, his intention to adduce evidence contrary to the report and in such cases court may send the sample to the Central Pesticides Laboratory for test and analysis. On receipt of such samples the Central Pesticides Laboratory shall within a period of thirty days carry out the test and analysis and submit the report in writing signed by the Director of Central Pesticide Laboratory which shall be conclusive evidence for the fact stated therein.

Clause 31 provides that where any person has been convicted for contravening any provision of the Bill or the rules made thereunder, the stock of the batch of pesticide in respect of which contravention was made, shall be liable to confiscation. It also provides that if court is satisfied on application of pesticide inspector or otherwise and after making such enquiry as may be necessary that pesticide is misbranded, substandard or spurious, such pesticide is also liable to confiscation.

Clause 32 provides that the State Government may by notification in the Official Gazette require any person or class of persons to submit a report of all occurrences of poisoning (through the use or handling of any pesticide) to such officer as may be mentioned in the notification. It also requires the State Government to submit a report in this regard to the Central Government on quarterly basis.

Clause 33 provides that if on receipt of report under clause 32 or otherwise the State Government or Central Government is of the opinion to be recorded in writing that use of any pesticide or any batch thereof is likely to involve such risk to human beings or animals which require immediate action then the Government may by notification prohibit the sale, distribution or use of said pesticide or batch in such area to such extent and for such period not exceeding one hundred and eighty days during the pending investigation and if such investigation is not completed within the said period the Central Government or State Government with prior approval of the Central Government may extend such prohibition for a further period not exceeding sixty days in aggregate, and on the result of investigation or receipt of report from the State Government, if the Central Government after consulting the Registration Committee is satisfied that the use of said pesticide or batch is likely to cause any risk, it may pass any order as it deems fit including an order refusing to register the pesticide or cancellation of registration of the pesticide.

Clause 34 requires that any order of refusal to register any pesticide or cancellation of registration of a pesticide shall be notified in the Official Gazette in prescribed manner.

Clause 35 provides for punishment of the fine which shall not be less than Rs. 25,000/- which may extend to Rs. 50,000/- or imprisonment for a term upto six months or with both for contravention of any provision of the Bill or the rules made thereunder.

Clause 36 provides for a penalty upto Rs. 25,000/- for obstructing a pesticide inspector or an officer exercising the power of pesticide inspector in exercise of his powers or discharge of his duties under the Bill or the rules made thereunder.

Clause 37 provides for punishment of the fine which shall not be less than Rs. 25,000/- which may extend to Rs. 1,00,000/- or imprisonment for a term upto one year or with both for

import, export, manufacture, sell, stock or exhibit for sale or distribution of any misbranded pesticide.

Clause 38 provides for punishment of fine which shall not be less than Rs. 1,00,000/- which may extend to Rs. 5,00,000/- or with imprisonment for a term which may extend to two years or with both for import, export, manufacture, sell, *etc.*, of substandard pesticide or import, export of any pesticide in contravention of sub-clause (3) of clause 22.

Clause 39 provides for punishment of fine which shall not be less than Rs. 5,00,000/- which may extend Rs. 10,00,000/- or with imprisonment for a term which may extend to five years or with both in addition to cancellation of licence and sealing of manufacturing premises for import or manufacture any pesticide without a certificate of registration or manufacture, sell, stock, *etc.* without a valid licence or import, manufacture, sell, *etc.*, any spurious pesticide or any pesticide which is ineffective on a particular crop for which it is intended to be used as approved by the Registration Committee or is phytotoxic to that crop or it has a toxicity higher than the specified label or sells, stocks or distributes a pesticide in contravention of clause 33 or clause 23. It also provides for punishment of a fine which shall not be less than Rs. 25,000/- which may extend to Rs. 1,00,000/- or with imprisonment for a term which may extend to one year or with both for contravention of any other provision of the Bill or the rules made thereunder or conditions of certificate of registration or licence.

Clause 40 empowers the court to publish name of offender, their place of residence, the offence and penalty imposed on him if any person convicted of any offence under the Bill commits a like offence afterwards.

Clause 41 contains provisions relating to offences by companies. It seeks to provide that where a person committing offence is a company, every person responsible in the company for the conduct of its business will be liable to be proceeded against and where a person accused, proves that offence was committed without his knowledge he will not be liable. However, where it is proved that an offence has been committed with the consent or connivance or is attributable to the neglect of any Director, Manager, Secretary or any officer of the company, he shall be deemed to be guilty of the offence and shall be liable to be proceeded against.

Clause 42 provides that it shall not be a defence in a prosecution under the Bill that the accused was ignorant of the nature or quality of the pesticide in respect of which offence was committed or the risk involved in any manufacture, sale or use of such pesticide or the circumstances of its manufacture or import. It also provides for the purpose of clause 22, a pesticide shall not be deemed to be misbranded, substandard or spurious only by reason of the fact that there has been added thereto some innocuous substances or ingredient because the same is required for the manufacture or the preparation of the pesticide and not to increase the bulk, weight or measure of the pesticide or to conceal its inferior quality or other defect.

Clause 43 provides that any prosecution under the Bill shall not be instituted without the written consent of the State Government or a person authorised by it in this behalf. It also provides that any court inferior to that of metropolitan magistrate or a judicial magistrate of first class shall not try any offence under the Bill.

Clause 44 provides that if the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offence under the Bill in any district or metropolitan area it may after consultation with the High Court notify one or more courts of judicial magistrate of first class, or as the case may be, a metropolitan magistrate in such district or metropolitan area to be special court for the purpose of the Bill. It also provides that unless otherwise directed by the High Court, a court notified under this clause shall exercise jurisdiction only in respect of cases under the Bill and the jurisdiction and powers of its presiding officer shall extend throughout the district or the metropolitan area. It also provides that a special court notified under this clause shall be deemed to be a court established under sub-section (1) of section 11 or sub-section (1) of section 16 of the Code of Criminal Procedure, 1973 and the provision of that Code shall apply to such courts.

Clause 45 empowers the Central Government to give directions to a State Government or the Board for carrying out all or any of the provisions of the Bill and the State Government or the Board shall comply with such directions.

Clause 46 provides that members and officers of the Board, the Registration Committee and the pesticide inspector or an officer exercising the powers of pesticide inspector, when acting or purporting to act in pursuance of any provision of the Bill or the rules made thereunder, shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

Clause 47 provides immunity to Government or any officer of the Government or the Board, Registration Committee or any committee of the Board from suits, prosecution or other proceedings in respect of anything done or intended to be done in good faith under the Bill.

Clause 48 empowers the Central Government to make rules by notification in the official Gazette after consultation with the Board and subject to condition of previous publication. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. It also requires that every rule made under this clause shall be laid before each House of Parliament.

Clause 49 empowers the State Government to make rules by notification in the official Gazette after consultation with the Board and subject to condition of previous publication. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. It also requires that every rule made under this clause shall be laid before each House of State Legislature where it consists of two Houses or where such State Legislature consists of one House, before that House.

Clause 50 provides for exemption from the application of the provisions of the Bill in respect to the use of any pesticide by any person for his own household purposes or for garden or in respect of land under his cultivation. It also empowers the Central Government to exempt, on the recommendation of Registration Committee, from any or all provisions of the Bill, any substance having pesticidal properties or any preparation containing one or more substances if such substances or preparation is intended for the purpose other than those mentioned under sub-clause (j) or sub-clause(s) of clause 3. It also empowers the Central Government to exempt from all or any of the provisions of the Bills or rules made thereunder, any educational, scientific or research organization engaged in carrying out experiments with pesticides.

Clause 51 provides for compensation to the farmers in case any pesticide fails to provide the expected performance under given conditions. The compensation may be claimed from the manufacturer or distributor or stockist or retailer or pest control operator as per the provisions of the Consumer Protection Act, 1986.

Clause 52 provides that a batch of pesticide that has outlived its shelf-life or it has been declared to be misbranded, substandard or spurious or it has been banned shall be segregated and disposed of with a period of three months in such manner which is safe for human beings, animals and environment, as may be prescribed.

Clause 53 provides for repeal of the Insecticides Act, 1968 and also provides that all action done under the repealed Act shall be deemed to have been done under the corresponding provisions of the Bill.

Clause 54 empowers the central Government to issue an order, published in the Official Gazette and not inconsistent with the provisions of the Bill, for removing any difficulty which may have arisen in giving effect to the provisions of the Bill within a period of two years from the date of commencement of the Act. Every such order is also required to be laid before each House of Parliament.

3604-4.4.3.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide for constitution of the Central Pesticides Board to advise the Government on scientific and technical matters arising out of the administration of the Bill. Clause 11 provides for constitution of a Registration Committee for the purpose of registration of pesticides. Sub-clause (4) of clause 11 enables the Registration Committee to constitute one or more sub-committees to exercise such powers and perform functions as may be delegated to them. Sub-clause (2) of clause 10 makes provision for allowances of the Members of the Board, the Registration Committee and other Committees.

Clause 21 of the Bill seeks to establish a Central Pesticides Laboratory to carry out the functions entrusted to it. Clause 24 provides for appointment of the pesticide analyst for analysis of pesticides. Clause 25 provides for appointment of pesticide inspector to exercise the powers entrusted to him by or under the Bill.

2. Presently, a Central Insecticides Board and the Registration Committee constituted under the provisions of the Insecticides Act, 1968 (which is being repealed by the present Bill), or in operation. An amount of Rs. 8.81 crore have been allocated for the financial year 2008-09 to the Department of Agriculture and Cooperation to be utilised for the purposes of the administration of the Insecticides Act, 1968. The constitution of Central Pesticides Board and all other expenditure arising out of the administration of the proposed Pesticides Bill, 2008 shall be met out of this budgetary provision and no other additional expenditure is envisaged in the Bill. Apart from converting the insecticide analyst and the insecticide inspector as the pesticides analyst and the pesticide inspector, additional officials, if any, shall be appointed from amongst the officers of the Government. Therefore, the Bill does not entail any other additional expenditure.

3. The Bill does not involve any other expenditure recurring or non-recurring in nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 48 of the Bill empowers the Central Government to make rules, after consultation with the Board and subject to the condition of previous publication for carrying out the provisions of the Bill. Such rules may, *inter alia*, provide for:

(i) the manner of notifying the registered pesticides and specifying the pesticides having pesticidal properties under sub-clause (3) of clause 11;

(ii) the form and particulars of making application for registration of pesticides, fees for registration under clauses (4) and (12) of clause 12;

(iii) the manner of making appeal and payment of fee thereon under clause 14;

(iv) the form of application for the grant of licence for manufacture, sell, *etc.*, the fee payable therefore the form of register to be maintained by the licensing officer, the form of report to be submitted by the State Government to the Central Government under clause 17;

(v) the circumstances in which the license may be varied or amended under sub-clause (2) of clause 18;

(vi) the manner in, and the fee of payment of which, an appeal may be filed to the Central Government under clause 14;

(vii) the form in which the pesticide analyst shall submit a report of tests or analysis to the pesticide inspector under sub-clause (1) of clause 30;

(viii) the manner and time of segregation and disposal of pesticides on a batch which has outlived its shelf-life or has been declared miss-branded, sub-standard or spurious or has been banned under clause 52 of the Bill.

All the rules made under clause 48 of the Bill are required to be laid before each House of Parliament.

2. Clause 49 of the Bill empowers the State Government to make rules to provide for: (i) the qualifications of the licensing officer under clause 16; (ii) the authority to which, the manner in which, and the fees on payment of which, an appeal may be filed under clause 20.

Every rule made by the State Government are required to be laid before each House of the State Legislature where it consists of two Houses or where such State Legislature consist of one House, before that House.

3. That matter in respect of which rules may be made under the aforesaid provisions are matter of procedure and administrative details and it is not practical to provide for them in the Bill. The delegation of legislative powers, is therefore, of a normal character.

II

BILL NO. XLIV OF 2008

A Bill further to amend the Plantations Labour Act, 1951.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Plantations Labour (Amendment) Act, 2008.

Short title
and
commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States and any reference in any such provision to the commencement of this Act shall, in relation to any State, be construed as a reference to the coming into force of that provision in that State.

69 of 1951.

2. In section 2 of the Plantations Labour Act, 1951 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(a) in clause (e), the following *Explanation* shall be inserted, namely:—

‘Explanation.—For the purposes of this clause, “the person who has the ultimate control over the affairs of the plantation” means in the case of a plantation owned or controlled by—

(i) a company, firm or other association of individuals, whether incorporated or not, every director, partner or individual;

(ii) the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the plantation; and

(iii) a lessee, the lessee;';

(b) in clause (ee), for the words "and includes, where the worker is a male, his parents dependent upon him", the words "and includes parents and widow sister, dependent upon him or her" shall be substituted;

(c) in clause (k),—

(i) in the opening portion, after the words "manual or clerical", the words "and includes a person employed on contract for more than sixty days in a year" shall be inserted;

(ii) in sub-clause (ii), for the words "rupees seven hundred and fifty", the words "rupees ten thousand" shall be substituted;

(iii) in sub-clause (iii), for the words "managerial capacity, notwithstanding that his monthly wages do not exceed rupees seven hundred and fifty", the words "managerial or administrative capacity, notwithstanding that his monthly wages do not exceed rupees ten thousand" shall be substituted.

Amendment
of section 7.

3. In section 7 of the principal Act, in sub-section (2), in clause (b), for the words "and children are, or are to be", the word "are" shall be substituted.

Amendment of
section 10.

4. In section 10 of the principal Act, in sub-section (2), for the words "chief inspector", the words "State Government upon a request by the chief inspector" shall be substituted.

Insertion of
new Chapter
IVA.

5. After Chapter IV, the following Chapter shall be inserted, namely:—

"CHAPTER IVA

PROVISIONS AS TO SAFETY

Safety.

18A. (1) In every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances.

(2) The State Government may make rules for prohibiting or, restricting employment of women or adolescents in using or handling hazardous chemicals.

(3) The employer shall appoint persons possessing the prescribed qualifications to supervise the use, handling, storage and transportation of insecticides, chemicals and toxic substances in his plantation.

(4) Every employer shall ensure that every worker in plantation employed for handling, mixing, blending and applying insecticides, chemicals and toxic substances, is trained about the hazards involved in different operations in which he is engaged, the various safety measures and safe work practices to be adopted in emergencies arising from spillage of such insecticides chemicals and toxic substances and such other matters as may be prescribed by the State Government.

(5) Every worker who is exposed to insecticides, chemicals and toxic substances shall be medically examined periodically, in such manner as may be prescribed, by the State Government.

(6) Every employer shall maintain health record of every worker who is exposed to insecticides, chemicals and toxic substances which are used, handled, stored or transported in a plantation, and every such worker shall have access to such record.

3604-4.9.9.

(7) Every employer shall provide—

- (a) washing, bathing and clock room facilities; and
- (b) protective clothing and equipment,

to every worker engaged in handling insecticides, chemicals or toxic substances in such manner as may be prescribed by the State Government.

(8) Every employer shall display in the plantation a list of permissible concentrations of insecticides, chemicals and toxic substances in the breathing zone of the workers engaged in the handling and application of such insecticides, chemicals and toxic substances.

(9) Every employer shall exhibit such precautionary notices as may be prescribed by the State Government indicating the hazards of insecticides, chemicals and toxic substances.

18B. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

Power of
State
Government
to make
rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the restriction on employment of women and adolescents for handling hazardous chemicals under sub-section (2) of section 18A;
- (b) the qualifications of supervisor appointed under sub-section (3) of section 18A;
- (c) the matters for training of workers under sub-section (4) of section 18A;
- (d) the medical examination of workers under sub-section (5) of section 18A;
- (e) the facilities and equipment to be provided to the workers engaged in handling insecticides, chemicals and toxic substances under sub-section (7) of section 18A;
- (f) the precautionary notices to be exhibited under sub-section (9) of section 18A.”.

6. In section 19 of the principal Act, in sub-section (1), the words “or child” shall be omitted.

Amendment
of section 19.

7. After section 23 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section 24.

“24. No child shall be employed to work in any plantation.”.

Prohibition
of employ-
ment of
Children.

8. In section 25 of the principal Act,—

Amendment
of section 25.

- (a) the words “or child” shall be omitted;
- (b) in the marginal heading, the words “and children” shall be omitted.

9. In section 26 of the principal Act,—

Amendment
of section 26.

- (a) in the opening portion, the words “child and no” shall be omitted;
- (b) in clause (b), the words “child or” shall be omitted.

10. In section 27 of the principal Act, in sub-section (1), the words “either as a child or” shall be omitted.

Amendment
of section 27.

Insertion of
new section
32C.

Compensation.

11. After section 32B, the following section shall be inserted, namely:—

“32C. The employer shall give compensation to a worker in plantation in case of accident and the memorandum relating to such compensation shall be got registered by the employer with the Commissioner in accordance with the provisions of the Workmen’s Compensation Act, 1923.”.

8 of 1923.

Amendment
of sections
33, 35 and
36.

12. In sections 33, 35 and 36 of the principal Act, for the words “three months, or with fine which may extend to five hundred rupees, or with both”, wherever they occur, the words “six months, or with fine which may extend to ten thousand rupees, or with both” shall be substituted.

Amendment
of section 34.

13. In section 34 of the principal Act, for the words “one month, or with fine which may extend to fifty rupees, or with both,” the words “two months, or with fine which may extend to one thousand rupees, or with both” shall be substituted.

Amendment
of section 37.

14. In section 37 of the principal Act, for the words “six months, or with fine which may extend to one thousand rupees, or with both”, the words “one year, or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both” shall be substituted.

Substitution
of new
sections for
section 39.

15. For section 39, the following sections shall be substituted, namely:—

Cognizance
of offences.

“39. No court shall take cognizance of any offence under this Act except on a complaint made by any worker or an office bearer of a trade union of which such worker is a member or an inspector and no court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under this Act.

Protection of
action taken
in good faith.

39A. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.”.

Amendment
of section 43.

16. In section 43 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every rule made by the State Government under this Act shall, as soon as may be after it is made, be laid before the State Legislature.”.

STATEMENT OF OBJECTS AND REASONS

The Plantations Labour Act, 1951, provides for the welfare of labour and regulates the conditions of work in plantations. One of the major problems of safety and health in plantations arises out of the risks associated with the growing use of agro-chemicals, especially insecticides, pesticides and herbicides. At present, the Act has no provisions for safety measures and precautions to be taken for the storage, utilisation and handling of such agro-chemicals. It is, therefore, considered necessary to amend the Act to provide for safeguards to be adopted in the use and handling of such substances. It is also necessary to amend the Act to enable the Central Government to prohibit, restrict or regulate the employment of women and adolescents for handling hazardous chemicals in plantations. It is, therefore, considered necessary to amend the Act to prohibit employment of children below 14 years in plantations.

2. It has been felt that in order to ensure better implementation of welfare provisions under the Act, specific targets may be fixed for provisions of certain facilities and that penalties for non-compliance of such provisions should be made more stringent. It has also been considered necessary that the Act should be amended to make provisions relating to the liability of an employer in regard to the workmen employed by a contractor engaged for the execution of work by such employer. This Act also needs to be suitably amended to modify the definition of "family", "employer" and "worker" to make such definitions broad based and gender sensitive and also to make implementation of the Act more effective.

3. The Bill seeks to achieve the above objects.

OSCAR FERNANDES.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert a new Chapter IVA containing provisions dealing with safety of workers. This clause seeks to insert a new section 18A which empowers the Central Government to specify the manner in which, and the conditions and limitations subject to which women or adolescents may be employed for using or handling any hazardous chemical in a plantation. This clause also seeks to insert a new section 18B which empowers the State Governments to make rules for carrying out the purposes of the said Chapter.

2. Clause 11 of the Bill seeks to insert a new section 32C to provide for the employer to give compensation to a worker in a plantation in case of accident and the Memorandum relating to such compensation shall be registered by the employer with the Commissioner in accordance with the provisions of the Workmen's Compensation Act, 1923. Clause 16 seeks to amend section 43 relating to power to make rules to provide for laying of the rules framed by the State Government, before the State Legislature.

3. The matters in respect of which rules may be made are matters of procedure and administrative details. The delegation of the legislative power is therefore, of a normal character.

III

BILL No. XLVII OF 2008

A Bill to provide for the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gram Nyayalayas Act, 2008.

(2) It extends to the whole of India except the State of Jammu and Kashmir, the State of Nagaland, the State of Arunachal Pradesh, the State of Sikkim and to the tribal areas.

Explanation.—In this sub-section, the expression “tribal areas” means the areas

Short title,
extent and
commence-
ment.

5000.4.2008

specified in Parts I, II, IIA and III of the Table below paragraph 20 of the Sixth Schedule to the Constitution within the State of Assam, the State of Meghalaya, the State of Tripura and the State of Mizoram, respectively.

(3) It shall come into force on such date as the Central Government may, by notification published in the Official Gazette, appoint; and different dates may be appointed for different States.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Gram Nyayalaya" means a court established under sub-section (1) of section 3;

(b) "Gram Panchayat" means an institution (by whatever name called) of self-government constituted, at the village level, under article 243B of the Constitution, for the rural areas;

(c) "High Court" means,—

(i) in relation to any State, the High Court for that State;

(ii) in relation to a Union territory to which the jurisdiction of the High Court for a State has been extended by law, that High Court;

(iii) in relation to any other Union territory, the highest Court of criminal appeal for that territory other than the Supreme Court of India;

(d) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(e) "Nyayadhikari" means the presiding officer of a Gram Nyayalaya appointed under section 5;

(f) "Panchayat at intermediate level" means an institution (by whatever name called) of self-government constituted, at the intermediate level, under article 243B of the Constitution, for the rural areas in accordance with the provisions of Part IX of the Constitution;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "Schedule" means the Schedule appended to this Act;

(i) "State Government", in relation to a Union territory, means the administrator thereof appointed under article 239 of the Constitution;

(j) words and expressions used herein and not defined but defined in the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1973 shall have the meanings respectively assigned to them in those Codes.

5 of 1908.
2 of 1974.

CHAPTER II

GRAM NYAYALAYA

3. (1) For the purpose of exercising the jurisdiction and powers conferred on a Gram Nyayalaya by this Act, the State Government, after consultation with the High Court, may, by notification, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats.

Establishment
of Gram
Nyayalayas.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Gram Nyayalaya shall extend and may, at any time, increase, reduce or alter such limits.

(3) The Gram Nyayalayas established under sub-section (1) shall be in addition to the courts established under any other law for the time being in force.

Headquarters
of Gram
Nyayalaya.

4. The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

Appointment
of
Nyayadhikari.

5. The State Government shall, in consultation with the High Court, appoint a Nyayadhikari for every Gram Nyayalaya.

Qualifications
for appoint-
ment of
Nyayadhikari.

6. (1) A person shall not be qualified to be appointed as a Nyayadhikari unless he is eligible to be appointed as a Judicial Magistrate of the first class.

(2) While appointing a Nyayadhikari, representation shall be given to the members of the Scheduled Castes, the Scheduled Tribes, women and such other classes or communities as may be specified by notification, by the State Government from time to time.

Salary,
allowances and
other terms
and con-
ditions of
service of
Nyayadhikari.

7. The salary and other allowances payable to, and the other terms and conditions of service of, a Nyayadhikari shall be such as may be applicable to the Judicial Magistrate of the first class.

Nyayadhikari
not to preside
over proceed-
ings in which
he is inter-
ested.

8. The Nyayadhikari shall not preside over the proceedings of a Gram Nyayalaya in which he has any interest or is otherwise involved in the subject matter of the dispute or is related to any party to such proceedings and in such a case, the Nyayadhikari shall refer the matter to the District Court or the Court of Session, as the case may be, for transferring it to any other Nyayadhikari.

Nyayadhikari
to hold mobile
courts and
conduct
proceedings in
villages.

9. (1) The Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct trial or proceedings at any place which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen:

Provided that where the Gram Nyayalaya decides to hold mobile court outside its headquarters, it shall give wide publicity as to the date and place where it proposes to hold mobile court.

(2) The State Government shall extend all facilities to the Gram Nyayalaya including the provision of vehicles for holding mobile court by the Nyayadhikari while conducting trial or proceedings outside its headquarters.

Seal of Gram
Nyayalaya.

10. Every Gram Nyayalaya established under this Act shall use a seal of the court in such form and dimensions as may be prescribed by the High Court with the approval of the State Government.

CHAPTER III

JURISDICTION, POWERS AND AUTHORITY OF GRAM NYAYALAYA

Jurisdiction of
Gram
Nyayalaya.

11. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or 2 of 1974. the Code of Civil Procedure, 1908 or any other law for the time being in force, the Gram 5 of 1908. Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.

Criminal
jurisdiction.

12. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or 2 of 1974. any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall—

(a) try all offences specified in Part I of the First Schedule; and

(b) try all offences and grant relief, if any, specified under the enactments included in Part II of that Schedule.

(2) Without prejudice to the provisions of sub-section (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State Government under sub-section (3) of section 14.

5 of 1908.

13. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, and subject to sub-section (2), the Gram Nyayalaya shall have jurisdiction to—

Civil jurisdiction.

(a) try all suits or proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule;

(b) try all classes of claims and disputes which may be notified by the Central Government under sub-section (1) of section 14 and by the State Government under sub-section (3) of the said section.

(2) The pecuniary limits of the Gram Nyayalaya shall be such as may be specified by the High Court, in consultation with the State Government, by notification, from time to time.

14. (1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.

Power to amend Schedules.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

(4) Every notification issued under sub-section (3) shall be laid before the State Legislature.

36 of 1963.

15. (1) The provisions of the Limitation Act, 1963 shall be applicable to the suits triable by the Gram Nyayalaya.

Limitation.

2 of 1974.

(2) The provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable in respect of the offences triable by the Gram Nyayalaya.

16. (1) The District Court or the Court of Session, as the case may be, with effect from such date as may be notified by the High Court, may transfer all the civil or criminal cases, pending before the courts subordinate to it, to the Gram Nyayalaya competent to try or dispose of such cases.

Transfer of pending proceedings.

(2) The Gram Nyayalaya may, in its discretion, either retry the cases or proceed from the stage at which it was transferred to it.

17. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist a Gram Nyayalaya in the discharge of its functions and provide the Gram Nyayalaya with such officers and other employees as it may think fit.

Duties of ministerial officers.

(2) The salaries and allowances payable to, and other conditions of service of, the officers and other employees of the Gram Nyayalaya shall be such as may be prescribed by the State Government.

(3) The officers and other employees of a Gram Nyayalaya shall perform such duties as may, from time to time, be assigned to them by the Nyayadhikari.

CHAPTER IV

PROCEDURE IN CRIMINAL CASES

Overriding effect of Act in criminal trial.

18. The provisions of this Act shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class.

2 of 1974.

Gram Nyayalaya to follow summary trial procedure.

19. (1) Notwithstanding anything contained in sub-section (1) of section 260 or sub-section (2) of section 262 of the Code of Criminal Procedure, 1973, the Gram Nyayalaya shall try the offences in a summary way in accordance with the procedure specified in Chapter XXI of the said Code and the provisions of sub-section (1) of section 262 and sections 263 to 265 of the said Code, shall, so far as may be, apply to such trial.

2 of 1974.

(2) When, in the course of a summary trial, it appears to the Nyayadhikari that the nature of the case is such that it is undesirable to try it summarily, the Nyayadhikari shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided under the Code of Criminal Procedure, 1973.

2 of 1974.

Plea bargaining before Gram Nyayalaya.

20. A person accused of an offence may file an application for plea bargaining in Gram Nyayalaya in which such offence is pending trial and the Gram Nyayalaya shall dispose of the case in accordance with the provisions of Chapter XXIA of the Code of Criminal Procedure, 1973.

2 of 1974.

Conduct of cases in Gram Nyayalaya and legal aid to parties.

21. (1) For the purpose of conducting criminal cases in the Gram Nyayalaya on behalf of the Government, the provisions of section 25 of the Code of Criminal Procedure, 1973 shall apply.

2 of 1974.

(2) Notwithstanding anything contained in sub-section (1), in a criminal proceeding before the Gram Nyayalaya, the complainant may engage an advocate of his choice at his expense to present the case of prosecution with the leave of the Gram Nyayalaya.

(3) The State Legal Services Authority, constituted under section 6 of the Legal Services Authorities Act, 1987, shall prepare a panel of advocates and assign at least two of them to be attached to each Gram Nyayalaya so that their services may be provided by the Gram Nyayalaya to the accused unable to engage an advocate.

39 of 1987.

Pronouncement of judgment.

22. (1) The judgment in every trial shall be pronounced by the Nyayadhikari in open court immediately after the termination of the trial or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

(2) The Gram Nyayalaya shall deliver a copy of its judgment immediately to both the parties free of cost.

CHAPTER V

PROCEDURE IN CIVIL CASES

Overriding effect of Act in civil proceedings.

23. The provisions of this Act shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a civil court.

5 of 1908.

Special procedure in civil disputes.

24. (1) Notwithstanding anything contained in any other law for the time being in force, every suit, claim or dispute under this Act shall be instituted by making an application to the Gram Nyayalaya in such form, in such manner, and accompanied by such fee, not exceeding rupees one hundred, as may be prescribed by the High Court, from time to time, in consultation with the State Government.

3604-4.9.12.

(2) Where a suit, claim or dispute has been duly instituted, a summons shall be issued by the Gram Nyayalaya, accompanied by a copy of the application made under sub-section (1), to the opposite party to appear and answer the claim by such date as may be specified therein and the same shall be served in such manner as may be prescribed by the High Court.

(3) After the opposite party files his written statement, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates.

(4) On the date fixed for hearing, the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and where the dispute does not require recording of any evidence, pronounce the judgment; and in case where it requires recording of evidence, the Gram Nyayalaya shall proceed further.

(5) The Gram Nyayalaya shall also have the power,—

(a) to dismiss any case for default or to proceed *ex parte*; and

(b) to set aside any such order of dismissal for default or any order passed by it for hearing the case *ex parte*.

(6) In regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and reasonable in the interest of justice.

(7) The proceedings shall, as far as practicable, be consistent with the interests of justice and the hearing shall be continued on a day-to-day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

(8) The Gram Nyayalaya shall dispose of the application made under sub-section (1) within a period of six months from the date of its institution.

(9) The judgment in every suit, claim or dispute shall be pronounced in open court by the Gram Nyayalaya immediately after conclusion of hearing or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

(10) The judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

(11) A copy of the judgment shall be delivered free of cost to both the parties within three days from the date of pronouncement of the judgment.

5 of 1908.

25. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the judgment passed by a Gram Nyayalaya shall be deemed to be a decree and it shall be executed by a Gram Nyayalaya as a decree of the civil court and for this purpose, the Gram Nyayalaya shall have all the powers of a civil court.

Execution of decrees and orders of Gram Nyayalaya.

5 of 1908.

(2) The Gram Nyayalaya shall not be bound by the procedure in respect of execution of a decree as provided in the Code of Civil Procedure, 1908 and it shall be guided by the principles of natural justice.

(3) A decree may be executed either by the Gram Nyayalaya which passed it or by the other Gram Nyayalaya to which it is sent for execution.

26. (1) In every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

Duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes.

(2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceeding.

Appointment
of Concilia-
tors.

27. (1) For the purposes of section 26, the District Court shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

(2) The sitting fee and other allowances payable to, and the other terms and conditions for engagement of, Conciliators shall be such as may be prescribed by the State Government.

Transfer of
civil disputes.

28. The District Court having jurisdiction may, on an application made by any party or when there is considerable pendency of cases in one Gram Nyayalaya or whenever it considers necessary in the interests of justice, transfer any case pending before a Gram Nyayalaya to any other Gram Nyayalaya within its jurisdiction.

CHAPTER VI

PROCEDURE GENERALLY

Proceedings to
be in the offi-
cial language of
the State.

29. The proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

Application of
Indian
Evidence Act,
1872.

30. A Gram Nyayalaya may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

1 of 1872.

Record of oral
evidence.

31. In suits or proceedings before a Gram Nyayalaya, it shall not be necessary to record the evidence of witnesses at length, but the Nyayadhikari, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of substance of what the witness deposes, and such memorandum shall be signed by the witness and the Nyayadhikari and it shall form part of the record.

Evidence of
formal
character on
affidavit.

32. (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

(2) The Gram Nyayalaya may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.

CHAPTER VII

APPEALS

Appeal in
criminal cases.

33. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law, no appeal shall lie from any judgment, sentence or order of a Gram Nyayalaya except as provided hereunder.

2 of 1974.

(2) No appeal shall lie where—

(a) an accused person has pleaded guilty and has been convicted on such plea;

(b) the Gram Nyayalaya has passed only a sentence of fine not exceeding one thousand rupees.

(3) Subject to sub-section (2), an appeal shall lie from any other judgment, sentence or order of a Gram Nyayalaya to the Court of Session.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of judgment, sentence or order of a Gram Nyayalaya:

Provided that the Court of Session may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(5) An appeal preferred under sub-section (3) shall be heard and disposed of by the Court of Session within six months from the date of filing of such appeal.

(6) The Court of Session may, pending disposal of the appeal, direct the suspension of the sentence or order appealed against.

(7) The decision of the Court of Session under sub-section (5) shall be final and no appeal or revision shall lie from the decision of the Court of Session:

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

5 of 1908.

34. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law, and subject to sub-section (2), an appeal shall lie from every judgment or order, not being an interlocutory order, of a Gram Nyayalaya to the District Court. Appeal in civil cases.

(2) No appeal shall lie from any judgment or order passed by the Gram Nyayalaya—

(a) with the consent of the parties;

(b) where the amount or value of the subject matter of a suit, claim or dispute does not exceed rupees one thousand;

(c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed rupees five thousand.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Gram Nyayalaya:

Provided that the District Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) An appeal preferred under sub-section (1) shall be heard and disposed of by the District Court within six months from the date of filing of the appeal.

(5) The District Court may, pending disposal of the appeal, stay execution of the judgment or order appealed against.

(6) The decision of the District Court under sub-section (4) shall be final and no appeal or revision shall lie from the decision of the District Court:

Provided that nothing in this sub-section shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

CHAPTER VIII

MISCELLANEOUS

35. (1) Every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the Gram Nyayalaya in the exercise of its lawful authority. Assistance of police to Gram Nyayalayas.

(2) Whenever the Gram Nyayalaya, in the discharge of its functions, directs a revenue officer or police officer or Government servant to provide assistance to the Gram Nyayalaya, he shall be bound to provide such assistance.

45 of 1860.

36. The Nyayadhikaris and the officers and other employees of the Gram Nyayalayas shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code. Nyayadhikaris and employees, etc., to be public servants.

Inspection of
Gram Nyaya-
layas.

37. The High Court may authorise any judicial officer superior in rank to the Nyayadhikari to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the High Court may prescribe and issue such instructions, as he considers necessary and submit a report to the High Court.

Power to
remove
difficulties.

38. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power of High
Court to make
rules.

39. (1) The High Court may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and dimensions of the seal of the Gram Nyayalaya under section 10;

(b) the form, the manner and the fee for institution of suit, claim or proceeding under sub-section (1) of section 24;

(c) manner of service on opposite party under sub-section (2) of section 24;

(d) procedure for conciliation under sub-section (1) of section 26;

(e) qualifications and experience of Conciliators under sub-section (1) of section 27;

(f) the period for inspection of Gram Nyayalayas under section 37.

(3) Every notification issued by the High Court shall be published in the Official Gazette.

Power of
State
Government
to make rules.

40. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Gram Nyayalayas under sub-section (2) of section 17;

(b) the sitting fee and other allowances payable to, and the other terms and conditions for engagement of, Conciliators under sub-section (2) of section 27.

(3) Every rule made by the State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

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THE FIRST SCHEDULE

(See sections 12 and 14)

PART I

OFFENCES UNDER THE INDIAN PENAL CODE (45 OF 1860), ETC.

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- (ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed rupees twenty thousand;
- (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed rupees twenty thousand;
- (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed rupees twenty thousand;
- (v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);
- (vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code (45 of 1860);
- (vii) abetment of any of the foregoing offences;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence.

PART II

OFFENCES AND RELIEF UNDER THE OTHER CENTRAL ACTS

- (i) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);
- (ii) the Payment of Wages Act, 1936 (4 of 1936);
- (iii) the Minimum Wages Act, 1948 (11 of 1948);
- (iv) the Protection of Civil Rights Act, 1955 (22 of 1955);
- (v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (vi) the Bonded Labour System (Abolition) Act, 1976 (19 of 1976);
- (vii) the Equal Remuneration Act, 1976 (25 of 1976);
- (viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).

PART III

OFFENCES AND RELIEF UNDER THE STATE ACTS

(To be notified by the State Government)

THE SECOND SCHEDULE

(See sections 13 and 14).

PART I

SUITS OF A CIVIL NATURE WITHIN THE JURISDICTION OF GRAM NYAYALAYAS

(i) *Civil Disputes:*

- (a) right to purchase of property;
- (b) use of common pasture;
- (c) regulation and timing of taking water from irrigation channel.

(ii) *Property Disputes:*

- (a) village and farm houses (Possession);
- (b) water channels;
- (c) right to draw water from a well or tube well.

(iii) *Other Disputes:*

- (a) claims under the Payment of Wages Act, 1936 (4 of 1936);
- (b) claims under the Minimum Wages Act, 1948 (11 of 1948);
- (c) money suits either arising from trade transaction or money lending;
- (d) disputes arising out of the partnership in cultivation of land;
- (e) disputes as to the use of forest produce by inhabitants of Gram Panchayats.

PART II

CLAIMS AND DISPUTES UNDER THE CENTRAL ACTS NOTIFIED UNDER SUB-SECTION (1) OF SECTION 14
BY THE CENTRAL GOVERNMENT

(To be notified by the Central Government)

PART III

CLAIMS AND DISPUTES UNDER THE STATE ACTS NOTIFIED UNDER SUB-SECTION (3) OF SECTION 14 BY
THE STATE GOVERNMENT

(To be notified by the State Government)

STATEMENT OF OBJECTS AND REASONS

Access to justice by the poor and the disadvantaged remains a worldwide problem. Article 39A of the Constitution directs the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

2. To give effect to the said mandate the Government has taken various measures to strengthen the judicial system by simplifying the procedural laws; incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation and mediation, conducting of Lok Adalats, etc., establishing Fast Track Courts, Special Courts and Tribunals and providing free legal aid to the poor, women and children.

3. To provide access to justice at the grass roots level, the Law Commission of India in its 114th Report on Gram Nyayalaya recommended establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided to the common man. Accordingly, the Government introduced the Gram Nyayalayas Bill, 2007 in Rajya Sabha on 15th May, 2007 to give effect to the said recommendations of the Law Commission. The Bill was referred to the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice. The said Standing Committee presented its Twenty-Second Report on the 6th September, 2007. The recommendations made by the said Standing Committee are substantive in nature and the Government has accepted most of its recommendations. Further the Government on 1st February, 2008 had organised a Conference of State Law Ministers, Law Secretaries and Registrar Generals of High Courts to seek their views on the various provisions of the said Bill. The suggestions made at the said Conference were also considered by the Government. Since giving effect to the recommendations of the Department Related Standing Committee and also the suggestions made at the Conference required amendments to almost all the clauses of the Bill, it is considered appropriate by the Government to withdraw the said Bill and to introduce a fresh Bill on the lines recommended by the said Standing Committee.

4. The salient features of the present Bill are as follows:—

(i) The Gram Nyayalaya shall be court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court. The qualifications, salary, terms and conditions of service of the Nyayadhikari shall be the same as that of the Judicial Magistrate of the first class;

(ii) the Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats;

(iii) the Gram Nyayalaya shall be a mobile court and shall exercise the powers of both Criminal and Civil Courts. The pecuniary jurisdiction of the civil suits, etc., shall be notified by the concerned High Court;

(iv) the Gram Nyayalaya shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the proposed Bill;

(v) the Central Government as well as the State Governments have been given power to amend the First Schedule and the Second Schedule of the proposed Bill as per their respective legislative competence;

(vi) the Gram Nyayalaya shall follow summary procedure in criminal trial as provided under sub-section (1) of section 262 and sections 262, 264 and 265 of the Code of Criminal Procedure, 1973 with certain modifications and as regards other matters which are not provided in the Bill, the provisions of the Code of Criminal Procedure shall be applicable;

(vii) the Gram Nyayalaya shall exercise the powers of a Civil Court with certain modifications and shall follow the special procedure as provided in the Bill; as regards other matters which are not provided in the Bill, the provisions of the Code of Civil Procedure, 1908 shall be applicable;

(viii) the Gram Nyayalaya shall try to settle the disputes as far as possible by bringing about conciliation between the parties and for this purpose, it shall make use of the conciliators to be appointed for this purpose;

(ix) the judgment and order passed by the Gram Nyayalaya shall be deemed to be a decree and to avoid delay in its execution, the Gram Nyayalaya shall follow summary procedure for its execution;

(x) the Gram Nyayalaya shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court;

(xi) an appeal from the judgment, sentence or order of the Gram Nyayalaya in criminal cases, to the extent provided in the Code of Criminal Procedure, 1973 shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal;

(xii) an appeal from the judgment and order of the Gram Nyayalaya in civil cases, to the extent provided in the Code of Civil Procedure, 1908 shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal;

(xiii) a person accused of an offence may file an application for plea bargaining in Gram Nyayalaya in which such offence is pending trial and the same will be disposed of by that Gram Nyayalaya in accordance with the provisions of Chapter XXIA of the Code of Criminal Procedure, 1973.

5. Justice to the poor at their doorstep is the dream of the common man. Setting up of Gram Nyayalayas which will travel from place to place would bring to the people of rural areas speedy, affordable and substantial justice.

6. The Bill seeks to achieve the above objects.

H. R. BHARDWAJ.

36044.9.9.

Notes on clauses

Clause 1.— This clause provides for the short title of the proposed legislation, its extent and commencement. The proposed legislation shall not be applicable to the States of Jammu and Kashmir, Nagaland, Arunachal Pradesh and Sikkim and the tribal areas specified in Parts I, II, IIA and III of the Table below paragraph 20 of the Sixth Schedule to the Constitution within the States of Assam, Meghalaya, Tripura and Mizoram.

Clause 2.— This clause seeks to define certain expressions, namely, “Gram Nyayalaya”, “Gram Panchayat”, “High Court”, “Nyayadhikari”, “Panchayat at intermediate level”, etc., which are used in the Bill.

Clause 3.— This clause provides for the establishment of one or more Gram Nyayalayas by the State Government.

Sub-clause (1) provides that the State Government, after consultation with the High Court, may, by notification, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats.

Sub-clause (2) empowers the State Government, after consultation with the High Court, to specify, by notification, the local limits of the area to which the jurisdiction of a Gram Nyayalaya shall extend and may, at any time, increase, reduce or alter such limits.

Sub-clause (3) provides that the Gram Nyayalayas shall be in addition to the civil and criminal courts established under any other law for the time being in force.

Clause 4.— This clause provides that the headquarters of the Gram Nyayalaya shall be located at the headquarters of the Panchayat at intermediate level in which the Gram Nyayalaya is established. However, the State Government is competent to notify any other place as the headquarters of a Gram Nyayalaya.

Clause 5.— This clause seeks to provide for the appointment of a Nyayadhikari by the State Government, in consultation with the High Court, for every Gram Nyayalaya.

Clause 6.— This clause provides for the qualifications of a person to be eligible to be appointed as a Nyayadhikari of a Gram Nyayalaya.

Sub-clause (1) provides that a person shall not be qualified to be appointed as a Nyayadhikari unless he is eligible to be appointed as a Judicial Magistrate of the first class.

Sub-clause (2) provides that while appointing the Nyayadhikari the State Government shall provide representation to the members of the Scheduled Castes, the Scheduled Tribes, women and such other classes or communities as may be specified by notification, by the State Government from time to time.

Clause 7.— This clause seeks to provide for the salary and other allowances payable to, and the other terms and conditions of, or service of a Nyayadhikari such as may be applicable to the Judicial Magistrate of the first class.

Clause 8.— This clause provides that the Nyayadhikari shall not preside over the proceedings of a Gram Nyayalaya in which he has any interest or is otherwise involved in the subject matter of the dispute or is related to any party to such proceedings and in such a case, the Nyayadhikari shall refer the matter to the District Court or the Court of Session, as the case may be, for transferring it to any other Nyayadhikari.

Clause 9.— This clause seeks to empower the Nyayadhikari to hold mobile courts and to conduct proceedings in villages.

Sub-clause (1) seeks to provide that the Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct trial or proceedings at any place which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part

of the cause of action had arisen. In conducting such mobile courts outside the headquarters of a Gram Nyayalaya the Nyayadhikari has to give wide publicity as to the date and place where it proposes to hold mobile court.

Sub-clause (2) seeks to provide that the State Government shall be required to extend all facilities to the Gram Nyayalaya including the provision of vehicles for holding mobile court by the Nyayadhikari to conduct the proceedings outside the headquarters of the Gram Nyayalaya.

Clause 10.— This clause seeks to provide for the seal of the Gram Nyayalaya. The High Court shall, by rules, determine the form and dimensions of the seal of the Gram Nyayalaya.

Clause 11.— This clause seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or the Code of Civil Procedure, 1908 or any other law for the time being in force, the Gram Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.

Clause 12.— This clause seeks to lay down the criminal jurisdiction of the Gram Nyayalayas.

Sub-clause (1) seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall try all offences specified in Part I of the First Schedule and shall also try offences and grant relief specified under the enactments specified in Part II of that Schedule.

Sub-clause (2) provides that without prejudice to the provisions of sub-clause (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State Government under sub-clause (3) of clause 14.

Clause 13.— This clause seeks to lay down the civil jurisdiction of the Gram Nyayalayas.

Sub-clause (1) provides that notwithstanding anything contained in Code of Civil Procedure, 1908 or any other law for the time being in force, and subject to sub-clause (2), the Gram Nyayalaya shall have jurisdiction to try all original suits and proceedings of a civil nature falling under the classes of disputes specified in Part I of the Second Schedule and try all claims and disputes which may be notified by the Central Government under sub-clause (1) of clause 14 and by the State Government under sub-clause (3) of clause 14.

Clause 14.— This clause seeks to empower the Central Government as well as the State Government to amend the Schedules to the Act as per their respective legislative competence.

Sub-clause (1) provides that if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.

Sub-clause (3) provides that if the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.

Sub-clauses (2) and (4) provide that every notification issued under sub-clause (1) by the Central Government and under sub-clause (3) by the State Government shall be laid before Parliament and the State Legislature respectively.

Clause 15.— This clause provides for application of period of limitation to the proceedings before Gram Nyayalayas.

Sub-clause (1) provides that the provisions of the Limitation Act, 1963 shall be applicable to the suits triable by the Gram Nyayalaya.

Sub-clause (2) seeks to provide that the provisions of Chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable in respect of the offences triable by the Gram Nyayalaya.

Clause 16.— This clause provides for transfer of pending cases in subordinate courts.

Sub-clause (1) provides that the District Court or the Court of Session, as the case may be, with effect from such date as may be notified by the High Court, transfer all the civil or criminal cases, pending before the courts subordinate to it, to the Gram Nyayalaya competent to try or dispose of such cases.

Sub-clause (2) provides that the Gram Nyayalaya may in its discretion, either retry the cases or proceed from the stage at which it was transferred.

Clause 17.— This clause deals with the duties of ministerial officers of the Gram Nyayalayas.

Sub-clause (1) provides that the State Government shall, in consultation with the High Court, determine the nature and categories of the officers and other employees required for assisting a Gram Nyayalaya in the discharge of its functions and providing the Gram Nyayalaya with such officers and other employees as it may think fit.

Sub-clause (2) seeks to empower the State Government to determine by rules the salaries and allowances payable to and the other conditions of service of the officers and other employees of the Gram Nyayalayas.

Clause 18.— This clause seeks to provide that provisions of Gram Nyayalaya shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law, but save as expressly provided in this Bill, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Bill, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class.

Clause 19.— This clause seeks to provide that the Gram Nyayalayas shall follow summary trial procedure in criminal cases.

Sub-clause (1) provides that notwithstanding anything contained in sub-section (1) of section 260 or sub-section (2) of section 262 of the Code of Criminal Procedure, 1973, the Gram Nyayalaya shall try the offences in a summary way in accordance with the procedure specified in Chapter XXI of the said Code and the provisions of sub-section (1) of section 262 and sections 263 to 265 of the Code, shall, so far as may be, apply to such trial.

Sub-clause (2) provides that when, in the course of a summary trial it appears to the Nyayadhikari that the nature of the case is such that it is undesirable to try it summarily, the Nyayadhikari shall recall any witness who may have been examined and proceed to re-hear, the case in the manner provided under the Code of Criminal Procedure.

Clause 20.— This clause provides that any person accused of an offence may file an application for plea bargaining in Gram Nyayalaya in which such offence is pending trial and the Gram Nyayalaya shall dispose of the case in accordance with the provisions of Chapter XXIA of the Code of Criminal Procedure, 1973.

Clause 21.— This clause deals with the conduct of cases in Gram Nyayalaya and legal aid to parties.

Sub-clause (1) provides that, for the purpose of conducting criminal cases in the Gram Nyayalaya on behalf of the Government, the provisions of section 25 of the Code of Criminal Procedure, 1973 shall apply.

Sub-clause (2) provides that notwithstanding anything contained in sub-clause (1), in a criminal proceeding before the Gram Nyayalaya, the complainant may engage an advocate of his choice and at his expense to present the case of the prosecution, with the leave of the Gram Nyayalaya.

Sub-clause (3) provides that the State Legal Services Authority constituted under section 6 of the Legal Services Authorities Act, 1987 shall prepare a panel of advocates and assign at least two of them to be attached to each Gram Nyayalaya so that their services may be provided by the Gram Nyayalaya to the accused unable to engage an advocate.

Clause 22.— This clause seeks to provide for the pronouncement of judgment by the Gram Nyayalayas in criminal cases.

Sub-clause (1) provides that the judgment in every trial shall be pronounced by the Nyayadhikari in open court immediately after the termination of the trial or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

Sub-clause (2) provides that the Gram Nyayalaya shall deliver a copy of its judgment immediately to both the parties free of cost.

Clause 23.— This clause seeks to provide that the provisions of this Bill shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law, but save as expressly provided in the said Bill, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Bill, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a civil court.

Clause 24.— This clause seeks to provide for a special procedure in civil disputes.

Sub-clause (1) provides that notwithstanding anything contained in any other law for the time being in force, every suit, claim or dispute under the proposed legislation shall be instituted by making an application to the Gram Nyayalaya in such form, in such manner, and accompanied by such fee, not exceeding rupees one hundred, as may be prescribed by the High Court, from time to time, in consultation with the State Government.

Sub-clause (2) provides that where a suit, claim or dispute has been duly instituted, a summons shall be issued by the Gram Nyayalaya, accompanied by a copy of the application made under sub-clause (1), to the opposite party to appear and answer the claim by such date as may be specified therein and the same shall be served in such manner as may be prescribed by the High Court.

Sub-clause (3) provides that after the opposite party files his written statement, the Gram Nyayalaya shall fix a date for hearing and inform all the parties to be present in person or through their advocates.

Sub-clause (4) provides that on the date fixed for hearing the Gram Nyayalaya shall hear both the parties in regard to their respective contentions and where the dispute does not require recording of any evidence, pronounce the judgment; and in case where it requires recording of evidence, the Gram Nyayalaya shall proceed further.

Sub-clause (5) provides that the Gram Nyayalaya shall also have the power,—

(a) to dismiss any case for default or to proceed *ex parte*; and

(b) to set aside any such order of dismissal for default or any order passed by it for hearing the case *ex parte*.

Sub-clause (6) provides that in regard to any incidental matter that may arise during the course of the proceedings, the Gram Nyayalaya shall adopt such procedure as it may deem just and proper in the interest of justice.

Sub-clause (7) provides that the proceedings shall, as far as practicable, be consistent with the interests of justice and the hearing shall be continued on a day-to-day basis until its conclusion, unless the Gram Nyayalaya finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded in writing.

Sub-clause (8) provides that the Gram Nyayalaya shall dispose of the application made under sub-clause (1) within a period of six months from the date of its institution.

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Sub-clause (9) provides that the judgment in every suit, claim or dispute shall be pronounced in open court by the Gram Nyayalaya immediately after conclusion of hearing or at any subsequent time, not exceeding fifteen days, of which notice shall be given to the parties.

Sub-clause (10) provides that the judgment shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

Sub-clause (11) provides that a copy of the order shall be delivered free of cost to both the parties within three days from the date of pronouncement of the judgment.

Clause 25.—This clause deals with the execution of decrees and orders of Gram Nyayalaya.

Sub-clause (1) provides that notwithstanding anything contained in the Code of Civil Procedure, 1908, the judgment passed by a Gram Nyayalaya shall be deemed to be a decree and it shall be executed by a Gram Nyayalaya as a decree of civil court and for this purpose the Gram Nyayalaya shall have all the powers of a civil court.

Sub-clause (2) provides that the Gram Nyayalaya shall not be bound by the procedure in respect of execution of a decree as provided in the Code of Civil Procedure, 1908 and it shall be guided by the principles of natural justice.

Sub-clause (3) provides that a decree may be executed either by the Gram Nyayalaya which passed it or by the other Gram Nyayalaya to which it is sent for execution.

Clause 26.— This clause seeks to lay down the duty of Gram Nyayalayas to make efforts for conciliation and settlement of civil disputes.

Sub-clause (1) provides that in every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

Sub-clause (2) provides that where in any suit or proceeding, at any stage, it appears to the Gram Nyayalaya that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceedings for such period as it thinks fit to enable them to make attempts to effect such a settlement.

Sub-clause (3) provides that where any proceedings is adjourned under sub-clause (2) the Gram Nyayalaya may in its discretion refer the matter to one or more Conciliators for effecting a settlement between the parties.

Sub-clause (4) provides that the power conferred by sub-clause (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceedings.

Clause 27.— This clause seeks to provide for appointment of Conciliators.

Sub-clause (1) provides that for the purposes of clause 26, the District Judge shall, in consultation with the District Magistrate, prepare a panel consisting of the names of social workers at the village level having integrity for appointment as Conciliators who possess such qualifications and experience as may be prescribed by the High Court.

Sub-clause (2) empowers the State Government to make rules laying down the rate of the sitting fee and other allowances payable to and the other terms and conditions for engagement of Conciliators.

Clause 28.—This clause provides that the District Court having jurisdiction may, on an application made by any party or when there is considerable pendency with one Gram Nyayalaya or whenever it considers necessary in the interests of justice, transfer any case pending before a Gram Nyayalaya to any other Gram Nyayalaya within its jurisdiction.

Clause 29.—This clause seeks to provide for the use of the official language of the State in proceedings before the Gram Nyayalayas. It provides that the proceedings before the Gram Nyayalaya and its judgment shall, as far as practicable, be in one of the official languages of the State other than the English language.

Clause 30.— This clause seeks to provide for the application of Indian Evidence Act, 1872. A Gram Nyayalaya may receive as evidence any report, statement, document, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the said Act.

Clause 31.—This clause provides that in suits or proceedings before a Gram Nyayalaya, it shall not be necessary to record the evidence of witnesses at length, but the Nyayadhikari, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of substance of what the witness deposes, and such memorandum shall be signed by the witness and the Nyayadhikari and it shall form part of the record.

Clause 32.—This clause seeks to provide for the evidence of formal character on affidavit.

Sub-clause (1) provides that the evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Gram Nyayalaya.

Sub-clause (2) provides that the Gram Nyayalaya may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding, summon and examine any such person as to the facts contained in his affidavit.

Clause 33.— This clause seeks to provide for appeals in criminal cases.

Sub-clause (1) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law, no appeal shall lie from any judgment, sentence or order of a Gram Nyayalaya except as provided hereunder.

Sub-clause (2) provides that no appeal shall lie where—

(a) an accused person has pleaded guilty and has been convicted on such plea;

(b) the Gram Nyayalaya has passed only a sentence of fine not exceeding one thousand rupees.

Sub-clause (3) provides that subject to provisions of sub-clause (2), an appeal shall lie from any other judgment, sentence or order of a Gram Nyayalaya to the Court of Session.

Sub-clause (4) provides that every appeal under this clause shall be preferred within a period of thirty days from the date of judgment, sentence or order of a Gram Nyayalaya, but the Court of Session may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

Sub-clause (5) provides that an appeal preferred under sub-clause (3) shall be heard and disposed of by the Court of Session within six months from the date of filing of the appeal.

Sub-clause (6) provides that the Court of Session may, pending disposal of the appeal, direct the suspension of the sentence or order appealed against.

Sub-clause (7) provides that the decision of the Court of Session under sub-clause (5) shall be final and no appeal or revision shall lie from the decision of the Court of Session, but nothing in this sub-clause shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

Clause 34.— This clause seeks to provide for appeals in civil cases.

Sub-clause (1) provides that notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law, and subject to sub-clause (2), an appeal shall lie from every judgment or order, not being an interlocutory order, of a Gram Nyayalaya to the District Court.

Sub-clause (2) provides that no appeal shall lie from any judgment or order passed by the Gram Nyayalaya—

(a) with the consent of the parties;

(b) where the amount or value of the subject matter of a suit, claim or dispute does not exceed rupees one thousand;

(c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed rupees five thousand.

Sub-clause (3) provides that every appeal under this clause shall be preferred within a period of thirty days from the date of the judgment or order of a Gram Nyayalaya, but the District Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

Sub-clause (4) provides that an appeal preferred under sub-clause (1) shall be heard and disposed of by the District Court within six months from the date of filing of the appeal.

Sub-clause (5) provides that the District Court may, pending disposal of the appeal, direct the suspension of the order or judgment appealed against.

Sub-clause (6) provides that the decision of the District Court under sub-clause (4) shall be final and no appeal or revision shall lie from the decision of the District Court, but nothing in this sub-clause shall preclude any person from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

Clause 35.—This clause seeks to provide for assistance of police to Gram Nyayalayas.

Sub-clause (1) provides that every police officer functioning within the local limits of jurisdiction of a Gram Nyayalaya shall be bound to assist the Gram Nyayalaya in the exercise of its lawful authority.

Sub-clause (2) provides that whenever the Gram Nyayalaya, in the discharge of its functions, directs a revenue officer or police officer or Government servant to provide assistance to the Gram Nyayalaya, he shall be bound to provide such assistance.

Clause 36.—This clause seeks to provide that the Nyayadhikaris and the officers and other employees of the Gram Nyayalayas shall be deemed to be public servants within the meaning of clause 21 of the Indian Penal Code when acting or purporting to act in pursuance of any of the provisions of the proposed legislation.

Clause 37.—This clause seeks to provide for inspection of Gram Nyayalayas. It provides that the High Court may authorise any judicial officer superior in rank to the Nyayadhikari to inspect the Gram Nyayalayas within his jurisdiction once in every six months or such other period as the High Court may prescribe and issue such instructions, as he considers necessary and submit a report to the High Court.

Clause 38.—This clause seeks to empower the Central Government to issue orders published in the Official Gazette making such provisions not inconsistent with the provisions of the proposed legislation for removing difficulties in giving effect to its provisions. Such orders could be issued within three years from the date of commencement of the proposed legislation. It also provides for laying of such orders before each House of Parliament.

Clause 39.—This clause seeks to empower the High Courts to make rules for carrying out the provisions of the proposed legislation and these are mainly matters of procedure.

Clause 40.—This clause confers power on the State Government, by notification, to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the matters in respect of which rules may be made by the State Government and also provides for laying of such rules before the State Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill empowers the State Governments to establish one or more Gram Nyayalayas for every Panchayat at intermediate level or for a group of contiguous Panchayats at intermediate level in every district to exercise both civil and criminal jurisdiction. Clause 5 of the Bill provides for appointment of Nyayadhikari and clause 7 provides for the salary and other allowances payable to, and the other terms and conditions of service of a Nyayadhikari. Clause 9 of the Bill provides for holding of mobile courts and conducting proceedings by the Nyayadhikari periodically visiting the villages falling under his jurisdiction. Clause 17 of the Bill empowers the State Government to provide officers and other employees required to assist a Gram Nyayalaya in the discharge of its functions and also for their salaries and allowances and the other conditions of service. Sub-clause (3) of clause 21 provides for empanelling of advocates by the State Legal Services Authority so that their services may be provided by the Gram Nyayalaya to the accused unable to engage an advocate. Clause 26 of the Bill empowers the State Government to determine the sitting fees and other allowances payable to, and the other terms and conditions for engagement of, Conciliators.

2. The recurring expenditure which is estimated at rupees 324.29 crores at the rate of 6.4 lakhs per Gram Nyayalaya per annum shall be shared equally between the Central Government and the State Government for first three years and thereafter it shall be met entirely by the State Government concerned. The Central Government shall meet the entire non-recurring expenditure. However, at this stage, it is not possible to estimate the exact amount of non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 39 empowers the High Court to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include the form and dimensions of the seal of the Gram Nyayalaya under clause 10; the form, the manner and the fee for institution of suit, claim or proceeding under sub-clause (1) of clause 24; the manner of service on opposite party under sub-clause (2) of clause 24; procedure for conciliation under sub-clause (1) of clause 26; qualifications and experience of Conciliators under sub-clause (1) of clause 27 and the period of inspection of Gram Nyayalaya under clause 37.

2. Clause 40 of the Bill empowers the State Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the matters in respect of which such rules may be made. These matters, *inter alia*, include the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Gram Nyayalaya under sub-clause (2) of clause 17 and the sitting fee and other allowances payable to, and the other terms and conditions for engagement of, Conciliators under sub-clause (2) of clause 27.

3. The rules made by the State Government are required to be laid before the State Legislature.

4. The matters in respect of which rules may be made either by the High Court or the State Government are matters of administrative details or of procedure and it is not possible to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

36044.00.

IV

BILL NO. XLVI OF 2008

A Bill to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Limited Liability Partnership Act, 2008.

(2) It extends to the whole of India.

Short title,
extent and
commencement.

It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) “address”, in relation to a partner of a limited liability partnership, means—

(i) if an individual, his usual residential address; and

(ii) if a body corporate, the address of its registered office;

(b) “advocate” means an advocate as defined in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961;

25 of 1961.

(c) “Appellate Tribunal” means the National Company Law Appellate Tribunal constituted under sub-section (1) of section 10FR of the Companies Act, 1956;

1 of 1956.

(d) “body corporate” means a company as defined in section 3 of the Companies Act, 1956 and includes —

1 of 1956.

(i) a limited liability partnership registered under this Act;

(ii) a limited liability partnership incorporated outside India; and

(iii) a company incorporated outside India,

but does not include—

(i) a corporation sole;

(ii) a co-operative society registered under any law for the time being in force; and

(iii) any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf;

1 of 1956.

(e) “business” includes every trade, profession, service and occupation;

(f) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

38 of 1949.

(g) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980.

(h) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959.

(i) “Court”, with respect to any offence under this Act, means the Court having jurisdiction as per the provisions of section 77;

(j) “designated partner” means any partner designated as such pursuant to section 7;

(k) “entity” means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932;

9 of 1932.

(l) “financial year”, in relation to a limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year:

Provided that in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year;

(m) “foreign limited liability partnership” means a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India;

(n) "limited liability partnership" means a partnership formed and registered under this Act;

(o) "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

(p) "name", in relation to a partner of a limited liability partnership, means—

(i) if an individual, his forename, middle name and surname; and

(ii) if a body corporate, its registered name;

(q) "partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

(r) "prescribed" means prescribed by rules made under this Act;

1 of 1956.

(s) "Registrar" means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under the Companies Act, 1956;

(t) "Schedule" means a Schedule to this Act;

1 of 1956.

(u) "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 10FB of the Companies Act, 1956.

1 of 1956.

(2) Words and expressions used and not defined in this Act but defined in the Companies Act, 1956 shall have the meanings respectively assigned to them in that Act.

CHAPTER II

NATURE OF LIMITED LIABILITY PARTNERSHIP

3. (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

Limited liability partnership to be body corporate.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

9 of 1932.

4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

Non-applicability of the Indian Partnership Act, 1932.

5. Any individual or body corporate may be a partner in a limited liability partnership:

Partners.

Provided that an individual shall not be capable of becoming a partner of a limited liability partnership, if—

(a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;

(b) he is an undischarged insolvent; or

(c) he has applied to be adjudicated as an insolvent and his application is pending.

6. (1) Every limited liability partnership shall have at least two partners.

Minimum number of partners.

(2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

Designated
partners.

7. (1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

Explanation.— For the purposes of this section, the term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the immediately preceding one year.

(2) Subject to the provisions of sub-section (1),—

(i) if the incorporation document—

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

(4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within thirty days of his appointment.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

(6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266A to 266G (both inclusive) of the Companies Act, 1956 shall apply *mutatis mutandis* for the said purpose. 1 of 1956.

Liabilities of
designated
partners.

8. Unless expressly provided otherwise in this Act, a designated partner shall be—

(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Changes in
designated
partners.

9. A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner:

Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

Punishment for
contravention
of sections 7, 8
and 9.

10. (1) If the limited liability partnership contravenes the provisions of sub-section (1) of section 7, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

36044.9.9.

(2) If the limited liability partnership contravenes the provisions of sub-section (4) and sub-section (5) of section 7, section 8 or section 9, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

CHAPTER III

INCORPORATION OF LIMITED LIABILITY PARTNERSHIP AND MATTERS INCIDENTAL THERETO

11. (1) For a limited liability partnership to be incorporated,—

Incorporation
document.

(a) two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;

(b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the limited liability partnership is to be situated; and

(c) there shall be filed along with the incorporation document, a statement in the prescribed form, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.

(2) The incorporation document shall—

(a) be in a form as may be prescribed;

(b) state the name of the limited liability partnership;

(c) state the proposed business of the limited liability partnership;

(d) state the address of the registered office of the limited liability partnership;

(e) state the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;

(f) state the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;

(g) contain such other information concerning the proposed limited liability partnership as may be prescribed.

(3) If a person makes a statement under clause (c) of sub-section (1) which he—

(a) knows to be false; or

(b) does not believe to be true,

shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.

12. (1) When the requirements imposed by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of fourteen days—

Incorporation
by registration.

(a) register the incorporation document; and

(b) give a certificate that the limited liability partnership is incorporated by the name specified therein.

(2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.

(3) The certificate issued under clause (b) of sub-section (1) shall be signed by the Registrar and authenticated by his official seal.

(4) The certificate shall be conclusive evidence that the limited liability partnership is incorporated by the name specified therein.

Registered
office of
limited liability
partnership
and change
therein.

13. (1) Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received.

(2) A document may be served on a limited liability partnership or a partner or designated partner thereof by sending it by post under a certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the limited liability partnership for the purpose in such form and manner as may be prescribed.

(3) A limited liability partnership may change the place of its registered office and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.

(4) If the limited liability partnership contravenes any provisions of this section, the limited liability partnership and its every partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Effect of
registration

14. On registration, a limited liability partnership shall, by its name, be capable of —

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
- (c) having a common seal, if it decides to have one; and
- (d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Name.

15. (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is —

- (a) undesirable; or
- (b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

47 of 1999.

Reservation of
name.

16. (1) A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—

- (a) the name of a proposed limited liability partnership; or
- (b) the name to which a limited liability partnership proposes to change its name.

(2) Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the Central Government in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in sub-section (2) of section 15, reserve the name for a period of three months from the date of intimation by the Registrar.

Change of name
of limited
liability partner-
ship.

17. (1) Notwithstanding anything contained in sections 15 and 16, where the Central Government is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which —

- (a) is a name referred to in sub-section (2) of section 15; or

(b) is identical with or too nearly resembles the name of any other limited liability partnership or body corporate or other name as to be likely to be mistaken for it,

the Central Government may direct such limited liability partnership to change its name, and the limited liability partnership shall comply with the said direction within three months after the date of the direction or such longer period as the Central Government may allow.

(2) Any limited liability partnership which fails to comply with a direction given under sub-section (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees and the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

18. (1) Any entity which already has a name similar to the name of a limited liability partnership which has been incorporated subsequently, may apply, in such manner as may be prescribed, to the Registrar to give a direction to any limited liability partnership, on a ground referred to in section 17 to change its name.

Application for direction to change name in certain circumstances.

(2) The Registrar shall not consider any application under sub-section (1) to give a direction to a limited liability partnership on the ground referred to in clause (b) of sub-section (1) of section 17 unless the Registrar receives the application within twenty-four months from the date of registration of the limited liability partnership under that name.

19. Any limited liability partnership may change its name registered with the Registrar by filing with him a notice of such change in such form and manner and on payment of such fees as may be prescribed.

Change of registered name.

20. If any person or persons carry on business under any name or title of which the words "Limited Liability Partnership" or "LLP" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated as limited liability partnership, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Penalty for improper use of words "limited liability partnership" or "LLP".

21. (1) Every limited liability partnership shall ensure that its invoices, official correspondence and publications bear the following, namely:-

Publication of name and limited liability.

(a) the name, address of its registered office and registration number of the limited liability partnership; and

(b) a statement that it is registered with limited liability.

(2) Any limited liability partnership which contravenes the provisions of sub-section (1) shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

CHAPTER IV

PARTNERS AND THEIR RELATIONS

22. On the incorporation of a limited liability partnership, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the limited liability partnership by and in accordance with the limited liability partnership agreement.

Eligibility to be partners.

23. (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.

Relationship of partners.

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

(3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.

(4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

Cessation of
partnership
interest.

24. (1) A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner.

(2) A person shall cease to be a partner of a limited liability partnership—

- (a) on his death or dissolution of the limited liability partnership; or
- (b) if he is declared to be of unsound mind by a competent court; or
- (c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

(3) Where a person has ceased to be a partner of a limited liability partnership (hereinafter referred to as "former partner"), the former partner is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner of the limited liability partnership unless—

(a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or

(b) notice that the former partner has ceased to be a partner of the limited liability partnership has been delivered to the Registrar.

(4) The cessation of a partner from the limited liability partnership does not by itself discharge the partner from any obligation to the limited liability partnership or to the other partners or to any other person which he incurred while being a partner.

(5) Where a partner of a limited liability partnership ceases to be a partner, unless otherwise provided in the limited liability partnership agreement, the former partner or a person entitled to his share in consequence of the death or insolvency of the former partner, shall be entitled to receive from the limited liability partnership —

(a) an amount equal to the capital contribution of the former partner actually made to the limited liability partnership; and

(b) his right to share in the accumulated profits of the limited liability partnership, after the deduction of accumulated losses of the limited liability partnership, determined as at the date the former partner ceased to be a partner.

(6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

Registration of
changes in
partners.

25. (1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.

(2) A limited liability partnership shall—

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.

3604 4.99.

(3) A notice filed with the Registrar under sub-section (2)—

(a) shall be in such form and accompanied by such fees as may be prescribed;

(b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and

(c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

(4) If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

(5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

(6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice:

Provided that where no confirmation is given by the limited liability partnership within fifteen days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

CHAPTER V

EXTENT AND LIMITATION OF LIABILITY OF LIMITED LIABILITY PARTNERSHIP AND PARTNERS

26. Every partner of a limited liability partnership is, for the purpose of the business of the limited liability partnership, the agent of the limited liability partnership, but not of other partners.

Partner as agent.

27. (1) A limited liability partnership is not bound by anything done by a partner in dealing with a person if—

Extent of liability of limited liability partnership.

(a) the partner in fact has no authority to act for the limited liability partnership in doing a particular act; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(2) The limited liability partnership is liable if a partner of a limited liability partnership is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the limited liability partnership or with its authority.

(3) An obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership.

(4) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

28. (1) A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the limited liability partnership.

Extent of liability of partner.

(2) The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a

partner shall not be personally liable for the wrongful act or omission of any other partner of the limited liability partnership.

Holding out.

29. (1) Any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a limited liability partnership is liable to any person who has on the faith of any such representation given credit to the limited liability partnership, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit:

Provided that where any credit is received by the limited liability partnership as a result of such representation, the limited liability partnership shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.

(2) Where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

Unlimited liability in case of fraud.

30. (1) In the event of an act carried out by a limited liability partnership, or any of its partners, with intent to defraud creditors of the limited liability partnership or any other person, or for any fraudulent purpose, the liability of the limited liability partnership and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the limited liability partnership:

Provided that in case any such act is carried out by a partner, the limited liability partnership is liable to the same extent as the partner unless it is established by the limited liability partnership that such act was without the knowledge or the authority of the limited liability partnership.

(2) Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

(3) Where a limited liability partnership or any partner or designated partner or employee of such limited liability partnership has conducted the affairs of the limited liability partnership in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the limited liability partnership and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct:

Provided that such limited liability partnership shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the limited liability partnership.

Whistle blowing.

31. (1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that—

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

(b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

CHAPTER VI

CONTRIBUTIONS

32. (1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

Form of contribution.

(2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

33. (1) The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.

Obligation to contribute.

(2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

CHAPTER VII

FINANCIAL DISCLOSURES

34. (1) The limited liability partnership shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.

Maintenance of books of account, other records and audit, etc.

(2) Every limited liability partnership shall, within a period of six months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said financial year in such form as may be prescribed, and such statement shall be signed by the designated partners of the limited liability partnership.

(3) Every limited liability partnership shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.

(4) The accounts of limited liability partnerships shall be audited in accordance with such rules as may be prescribed:

Provided that the Central Government may, by notification in the Official Gazette, exempt any class or classes of limited liability partnerships from the requirements of this sub-section.

(5) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

35. (1) Every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

Annual return.

(2) Any limited liability partnership which fails to comply with the provisions of this section shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(3) If the limited liability partnership contravenes the provisions of this section, the designated partner of such limited liability partnership shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Inspection of documents kept by Registrar.

36. The incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

Penalty for false statement.

37. If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—

- (a) which is false in any material particular, knowing it to be false; or
- (b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

Power of Registrar to obtain information.

38. (1) In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.

(2) In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.

(3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Compounding of offences.

39. The Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence.

Destruction of old records.

40. The Registrar may destroy any document filed or registered with him in physical form or in electronic form in accordance with such rules as may be prescribed.

Enforcement of duty to make returns, etc.

41. (1) If any limited liability partnership is in default in complying with—

(a) any provisions of this Act or of any other law which requires the filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or

(b) any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document,

and fails to make good the default within fourteen days after the service on the limited liability partnership of a notice requiring it to be done, the Tribunal may, on application by the Registrar, make an order directing that limited liability partnership or its designated partners or its partners to make good the default within such time as specified in the order.

(2) Any such order may provide that all the costs of and incidental to the application shall be borne by that limited liability partnership.

(3) Nothing in this section shall limit the operation of any other provision of this Act or any other law imposing penalties in respect of any default referred to in this section on that limited liability partnership.

CHAPTER VIII

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

42. (1) The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

Partner's transferable interest.

(2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

(3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

CHAPTER IX

INVESTIGATION

43. (1) The Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner as it may direct if—

Investigation of the affairs of limited liability partnership.

(a) the Tribunal, either *suo motu*, or on an application received from not less than one-fifth of the total number of partners of limited liability partnership, by order, declares that the affairs of the limited liability partnership ought to be investigated; or

(b) any Court, by order, declares that the affairs of a limited liability partnership ought to be investigated.

(2) The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.

(3) The appointment of inspectors pursuant to sub-section (2) may be made,—

(a) if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or

(b) if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

(c) if, in the opinion of the Central Government, there are circumstances suggesting—

(i) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

(ii) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or

(iii) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

44. An application by partners of the limited liability partnership under clause (a) of sub-section (1) of section 43 shall be supported by such evidence as the Tribunal may require for the purpose of showing that the applicants have good reason for requiring the investigation

Application by partners for investigation.

and the Central Government may, before appointing an inspector, require the applicants to give security, of such amount as may be prescribed, for payment of costs of the investigation.

Firm, body corporate or association not to be appointed as inspector.

45. No firm, body corporate or other association shall be appointed as an inspector.

Power of inspectors to carry out investigation into affairs of related entities, etc.

46. (1) If an inspector appointed by the Central Government to investigate the affairs of a limited liability partnership thinks it necessary for the purposes of his investigation to investigate also the affairs of an entity which has been associated in the past or is presently associated with the limited liability partnership or any present or former partner or designated partner of the limited liability partnership, the inspector shall have the power to do so and shall report on the affairs of the other entity or partner or designated partner, so far as he thinks that the results of his investigation thereof are relevant to the investigation of the affairs of the limited liability partnership.

(2) In the case of any entity or partner or designated partner referred to in sub-section (1), the inspector shall not exercise his power of investigating into, and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto:

Provided that before according approval under this sub-section, the Central Government shall give the entity or partner or designated partner a reasonable opportunity to show cause why such approval should not be accorded.

Production of documents and evidence.

47. (1) It shall be the duty of the designated partner and partners of the limited liability partnership—

(a) to preserve and to produce before an inspector or any person authorised by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may, with the previous approval of the Central Government, require any entity other than an entity referred to in sub-section (1) to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf, with the previous approval of that Government, as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector may keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for thirty days and thereafter shall return the same to the limited liability partnership, other entity or individual by whom or on whose behalf the books and papers are produced:

Provided that the inspector may call for the books and papers if they are needed again:

Provided further that if certified copies of the books and papers produced under sub-section (2) are furnished to the inspector, he shall return those books and papers to the entity or person concerned.

(4) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1);

(b) with the previous approval of the Central Government, any other person in relation to the affairs of the limited liability partnership or any other entity, as the case may be; and

(c) may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(5) If any person fails without reasonable cause or refuses—

(a) to produce before an inspector or any person authorised by him in this behalf with the previous approval of the Central Government any book or paper which it is his duty under sub-section (1) or sub-section (2) to produce ; or

(b) to furnish any information which is his duty under sub-section (2) to furnish ; or

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination,

he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

(6) The notes of any examination under sub-section (4) shall be taken down in writing and signed by the person whose examination was made on oath and a copy of such notes shall be given to the person so examined on oath and thereafter be used as an evidence by the inspector.

48. (1) Where in the course of investigation, the inspector has reasonable ground to believe that the books and papers of, or relating to, the limited liability partnership or other entity or partner or designated partner of such limited liability partnership may be destroyed, mutilated, altered, falsified or secreted, the inspector may make an application to the Judicial Magistrate of the first class, or, as the case may be, the Metropolitan Magistrate, having jurisdiction, for an order for the seizure of such books and papers.

Seizure of documents by inspector.

(2) After considering the application and hearing the inspector, if necessary, the Magistrate may, by order, authorise the inspector —

(a) to enter, with such assistance, as may be required, the place or places where such books and papers are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books and papers which the inspector considers it necessary for the purposes of his investigation.

(3) The inspector shall keep in his custody the books and papers seized under this section for such period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the concerned entity or person from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the books and papers shall not be kept seized for a continuous period of more than six months:

Provided further that the inspector may, before returning such books and papers as aforesaid, place identification marks on them or any part thereof.

(4) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

49. (1) The inspectors may, and if so directed by the Central Government, shall make interim reports to that Government, and on the conclusion of the investigation, shall make a final report to the Central Government and any such report shall be written or printed, as the Central Government may direct.

Inspector's report.

(2) The Central Government—

(a) shall forward a copy of any report (other than an interim report) made by the inspectors to the limited liability partnership at its registered office, and also to any other entity or person dealt with or related to the report; and

(b) may, if it thinks fit, furnish a copy thereof, on request and on payment of the prescribed fee, to any person or entity related to or affected by the report.

Prosecution.

50. If, from the report under section 49, it appears to the Central Government that any person in relation to the limited liability partnership or in relation to any other entity whose affairs have been investigated, has been guilty of any offence for which he is liable, the Central Government may prosecute such person for the offence; and it shall be the duty of all partners, designated partners and other employees and agents of the limited liability partnership or other entity, as the case may be, to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give.

Application for winding up of limited liability partnership.

51. If any such limited liability partnership is liable to be wound up under this Act or any other law for the time being in force, and it appears to the Central Government from any such report under section 49 that it is expedient to do so by reason of any such circumstances as are referred to in sub-clause (i) or sub-clause (ii) of clause (c) of sub-section (3) of section 43, the Central Government may, unless the limited liability partnership is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf, a petition for the winding up of the limited liability partnership on the ground that it is just and equitable that it should be wound up.

Proceedings for recovery of damages or property.

52. If, from any report under section 49, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the limited liability partnership or any entity whose affairs have been investigated,—

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such limited liability partnership or such other entity; or

(b) for the recovery of any property of such limited liability partnership or such other entity, which has been misapplied or wrongfully retained,

the Central Government may itself bring proceedings for that purpose.

Expenses of investigation.

53. (1) The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Act shall be defrayed in the first instance by the Central Government; but the following persons shall, to the extent mentioned below, be liable to reimburse the Central Government in respect of such expenses, namely:—

(a) any person who is convicted on a prosecution, or who is ordered to pay damages or restore any property in proceedings brought by virtue of section 52, may, in the same proceedings, be ordered to pay the said expenses to such extent as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) any entity in whose name proceedings are brought as aforesaid shall be liable, to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and

(c) unless, as a result of the investigation, a prosecution is instituted in pursuance of section 50,—

(i) any entity, a partner or designated partner or any other person dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as, the Central Government otherwise directs; and

36044.8.8.5.

(ii) the applicants for the investigation, where the inspector was appointed in pursuance of the provisions of clause (a) of sub-section (1) of section 43, shall be liable to such extent, if any, as the Central Government may direct.

(2) Any amount for which a limited liability partnership or other entity is liable by virtue of clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

(3) The amount of expenses in respect of which any limited liability partnership, other entity, a partner or designated partner or any other person is liable under sub-clause (i) of clause (c) of sub-section (1) to reimburse the Central Government shall be recoverable as arrears of land revenue.

(4) For the purposes of this section, any costs or expenses incurred by the Central Government or in connection with the proceedings brought by virtue of section 52 shall be treated as expenses of the investigation giving rise to the proceedings.

54. A copy of any report of any inspector or inspectors appointed under the provisions of this Act, authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

Inspector's
report to be
evidence.

CHAPTER X

CONVERSION TO LIMITED LIABILITY PARTNERSHIP

55. A firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule.

Conversion
from firm into
limited liability
partnership.

56. A private company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Third Schedule.

Conversion
from private
company into
limited liability
partnership.

57. An unlisted public company may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Fourth Schedule.

Conversion
from unlisted
public
company into
limited liability
partnership.

58. (1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Registration
and effect of
conversion.

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956, as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

(2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

(3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

CHAPTER XI

FOREIGN LIMITED LIABILITY PARTNERSHIPS

Foreign limited liability partnerships.

59. The Central Government may make rules for provisions in relation to establishment of place of business by foreign limited liability partnerships within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with 1 of 1956.

CHAPTER XII

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

Compromise, or arrangement of limited liability partnerships.

60. (1) Where a compromise or arrangement is proposed—

(a) between a limited liability partnership and its creditors; or

(b) between a limited liability partnership and its partners,

the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the Tribunal directs.

(2) If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.

(3) An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.

(4) If default is made in complying with sub-section (3), the limited liability partnership, and every designated partner of the limited liability partnership shall be punishable with fine which may extend to one lakh rupees.

(5) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

61. (1) Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it—

Power of
Tribunal to
enforce
compromise or
arrangement.

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

62. (1) Where an application is made to the Tribunal under section 60 for sanctioning of a compromise or arrangement proposed between a limited liability partnership and any such persons as are mentioned in that section, and it is shown to the Tribunal that—

Provisions for
facilitating
reconstruction
or
amalgamation
of limited
liability
partnerships.

(a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership or limited liability partnerships, or the amalgamation of any two or more limited liability partnerships; and

(b) under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (in this section referred to as a "transferor limited liability partnership") is to be transferred to another limited liability partnership (in this section referred to as the "transferee limited liability partnership"),

the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:—

(i) the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;

(ii) the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;

(iii) the dissolution, without winding up, of any transferor limited liability partnership;

(iv) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

(v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a limited liability partnership, which is being wound up, with any other limited liability partnership or limited liability

partnerships, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest:

Provided further that no order for the dissolution of any transferor limited liability partnership under clause (iii) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the limited liability partnership, made a report to the Tribunal that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

(4) If default is made in complying with the provisions of sub-section (3), the limited liability partnership, every designated partner of the limited liability partnership shall be punishable with fine which may extend to fifty thousand rupees.

Explanation.— In this section “property” includes property, rights and powers of every description; and “liabilities” includes duties of every description.

CHAPTER XIII

WINDING UP AND DISSOLUTION

Winding up and dissolution.

Circumstances in which limited liability partnership may be wound up by Tribunal.

63. The winding up of a limited liability partnership may be either voluntary or by the Tribunal and limited liability partnership, so wound up may be dissolved.

64. A limited liability partnership may be wound up by the Tribunal,—

- (a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- (b) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- (c) if the limited liability partnership is unable to pay its debts;
- (d) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- (e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- (f) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Rules for winding up and dissolution.

65. The Central Government may make rules for the provisions in relation to winding up and dissolution of limited liability partnerships.

CHAPTER XIV

MISCELLANEOUS

Business transactions of partner with limited liability partnership.

66. A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

3604-4.8.9.

1 of 1956.

67. (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—

(a) shall apply to any limited liability partnership; or

(b) shall apply to any limited liability partnership with such exception, modification and adaptation, as may be specified, in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Application of the provisions of the Companies Act.

68. (1) Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered in such manner and subject to such conditions as may be prescribed.

Electronic filing of documents.

21 of 2000.

(2) A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the Information Technology Act, 2000 to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(3) Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document.

69. Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time upto a period of three hundred days from the date within which it should have been filed, on payment of additional fee of one hundred rupees for every day of such delay in addition to any fee as is payable for filing of such document or return:

Payment of additional fee.

Provided that such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of three hundred days on payment of fee and additional fee specified in this section.

70. In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Enhanced punishment.

71. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

72. (1) The Tribunal shall exercise such powers and perform such functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force.

Jurisdiction of Tribunal and Appellate Tribunal.

1 of 1956.

(2) Any person aggrieved by an order or decision of Tribunal may prefer an appeal to the Appellate Tribunal and the provisions of sections 10FQ, 10FZA, 10G, 10GD, 10GE and 10GF of the Companies Act, 1956 shall be applicable in respect of such appeal.

73. Whoever fails to comply with any order made by the Tribunal under any provision of this Act shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees.

Penalty on non-compliance of any order passed by Tribunal.

General penalties.

74. Any person guilty of an offence under this Act for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.

Power of Registrar to strike defunct limited liability partnership off register.

75. Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act, the name of limited liability partnership may be struck off the register of limited liability partnerships in such manner as may be prescribed:

Provided that the Registrar shall, before striking off the name of any limited liability partnership under this section, give such limited liability partnership a reasonable opportunity of being heard.

Offences by limited liability partnerships.

76. Where an offence under this Act committed by a limited liability partnership is proved —

(a) to have been committed with the consent or connivance of a partner or partners or designated partner or designated partners of the limited liability partnership; or

(b) to be attributable to any neglect on the part of the partner or partners or designated partner or designated partners of that limited liability partnership,

the partner or partners or designated partner or designated partners of the limited liability partnership, as the case may be, as well as that limited liability partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Jurisdiction of Court.

77. Notwithstanding any provision to the contrary in any Act for the time being in force, the Judicial Magistrate of the first class or, as the case may be, the Metropolitan Magistrate shall have jurisdiction to try any offence under this Act and shall have power to impose punishment in respect of said offence.

Power to alter Schedules.

78. (1) The Central Government may, by notification in the Official Gazette, alter any of the provisions contained in any of the Schedules to this Act.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in the Act and shall come into force on the date of the notification, unless the notification otherwise directs.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

Power to make rules.

79. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) form and manner of prior consent to be given by designated partner under sub-section (3) of section 7;

(b) the form and manner of particulars of every individual agreeing to act as designated partner of limited liability partnership under sub-section (4) of section 7;

(c) the conditions and requirements relating to the eligibility of an individual to become a designated partner under sub-section (5) of section 7;

(d) the manner of filing the incorporation document and payment of fees payable thereof under clause (b) of sub-section (1) of section 11;

(e) the form of statement to be filed under clause (c) of sub-section (1) of section 11;

(f) the form of incorporation document under clause (a) of sub-section (2) of section 11;

(g) the information to be contained in the incorporation document concerning the proposed limited liability partnership under clause (g) of sub-section (2) of section 11;

(h) the manner of serving the documents on a limited liability partnership or a partner or a designated partner and the form and manner in which any other address may be declared by the limited liability partnership under sub-section (2) of section 13;

(i) the form and manner of notice to the Registrar and the conditions in respect of change of registered office under sub-section (3) of section 13;

(j) the form and manner of application and amount of fee payable to the Registrar under sub-section (1) of section 16;

(k) the manner in which names will be reserved by the Registrar under sub-section (2) of section 16;

(l) the manner in which an application may be made by an entity under sub-section (1) of section 18;

(m) the form and manner of notice of change of name of limited liability partnership and the amount of fee payable under section 19;

(n) the form and manner of the limited liability partnership agreement and the changes made therein and the amount of fee payable under sub-section (2) of section 23;

(o) the form of notice, the amount of fee payable and the manner of authentication of the statement under clauses (a), (b) and (c) of sub-section (3) of section 25;

(p) the manner of accounting and disclosure of monetary value of contribution of a partner under sub-section (2) of section 32;

(q) the books of account and the period of their maintenance under sub-section (1) of section 34;

(r) the form of Statement of Account and Solvency under sub-section (2) of section 34;

(s) the form, manner, fee and time of filing of Statement of Account and Solvency under sub-section (3) of section 34;

(t) the audit of accounts of a limited liability partnership under sub-section (4) of section 34;

(u) the form and manner of annual return and fee payable under sub-section (1) of section 35;

(v) the manner and amount of fee payable for inspection of incorporation document, names of partners and changes made therein, Statement of Account and Solvency and annual return under section 36;

(w) the destruction of documents by Registrar in any form under section 40;

(x) the amount required as security under clause (a) of sub-section (3) of section 43;

(y) the amount of security to be given under section 44;

(z) the fee payable for furnishing a copy under clause (b) of sub-section (2) of section 49;

(za) the manner of authentication of report of inspector under section 54;

(zb) the form and manner of particulars about conversion under the proviso to sub-section (1) of section 58;

(zc) in relation to establishment of place of business and carrying on business in India by foreign limited liability partnerships and regulatory mechanism and composition under section 59;

(zd) the manner of calling, holding and conducting meeting under sub-section (1) of section 60;

(ze) in relation to winding up and dissolution of limited liability partnerships under section 65;

(zf) the manner and conditions for filing document electronically under sub-section (1) of section 68;

(zg) the manner for striking off the names of limited liability partnerships from the register under section 75;

(zh) the form and manner of statement containing particulars and amount of fee payable under sub-paragraph (a) of paragraph 4 of the Second Schedule;

(zi) the form and manner of particulars about conversion under the proviso to paragraph 5 of the Second Schedule;

(zj) the form and manner of the statement and the amount of fee payable under sub-paragraph (a) of paragraph 3 of the Third Schedule;

(zk) the form and manner of particulars about conversion under the proviso to paragraph 4 of the Third Schedule;

(zl) the form and manner of the statement and amount of fee payable under sub-paragraph (a) of paragraph 4 of the Fourth Schedule; and

(zm) the form and manner of particulars about conversion under the proviso to paragraph 5 of the Fourth Schedule.

(3) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to
remove
difficulties.

80. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

3604-8-9.9.

1 of 1956.

81. Until the Tribunal and the Appellate Tribunal are constituted under the provisions of the Companies Act, 1956, the provisions of this Act shall have effect subject to the following modifications, namely:—

Transitional provisions.

(a) for the word "Tribunal" occurring in clause (b) of sub-section (1) of section 41, clause (a) of sub-section (1) of section 43 and section 44, the words "Company Law Board" had been substituted;

(b) for the word "Tribunal" occurring in section 51 and in sections 60 to 64, the words "High Court" had been substituted;

(c) for the words "Appellate Tribunal" occurring in sub-section (2) of section 72, the words "High Court" had been substituted.

THE FIRST SCHEDULE

[See section 23(4)]

PROVISIONS REGARDING MATTERS RELATING TO MUTUAL RIGHTS AND DUTIES OF PARTNERS AND LIMITED LIABILITY PARTNERSHIP AND ITS PARTNERS APPLICABLE IN THE ABSENCE OF ANY AGREEMENT ON SUCH MATTERS

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.

2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.

3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him —

(a) in the ordinary and proper conduct of the business of the limited liability partnership; or

(b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.

5. Every partner may take part in the management of the limited liability partnership.

6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.

7. No person may be introduced as a partner without the consent of all the existing partners.

8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.

9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.

10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

THE SECOND SCHEDULE

(See section 55)

CONVERSION FROM FIRM INTO LIMITED LIABILITY PARTNERSHIP

1. In this Schedule, unless the context otherwise requires, —

Interpretation.

9 of 1932.

(a) "firm" means a firm as defined in section 4 of the Indian Partnership Act, 1932;

(b) "convert", in relation to a firm converting into a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to the limited liability partnership in accordance with this Schedule.

2. (1) A firm may convert into a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

Conversion from firm into limited liability partnership.

(2) Upon such conversion, the partners of the firm shall be bound by the provisions of this Schedule that are applicable to them.

3. A firm may apply to convert into a limited liability partnership in accordance with this Schedule if and only if the partners of the limited liability partnership into which the firm is to be converted, comprise, all the partners of the firm and no one else.

Eligibility for conversion.

4. A firm may apply to convert into a limited liability partnership by filing with the Registrar —

Statements to be filed.

(a) a statement by all of its partners in such form and manner and accompanied by such fee as the Central Government may prescribe, containing the following particulars, namely:—

(i) the name and registration number, if applicable, of the firm; and

(ii) the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable, and

9 of 1932.

(b) incorporation document and statement referred to in section 11.

5. On receiving the documents referred to in paragraph 4, the Registrar shall subject to the provisions of this Act, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Registration of conversion.

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform, the concerned Registrar of Firms with which it was registered under the provisions of the Indian Partnership Act, 1932 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

9 of 1932.

6. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act:

Registrar may refuse to register.

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 4 to be verified in such manner, as he considers fit.

7. On and from the date of registration specified in the certificate of registration issued under paragraph 5,—

Effect of registration.

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 removed from the records maintained under that Act. 9 of 1932.

Registration in relation to property.

8. If any property to which sub-paragraph (b) of paragraph 7 applies is registered with any authority, the limited liability partnership shall, as soon as practicable after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as the authority may specify.

Pending proceedings.

9. All proceedings by or against the firm which are pending in any Court or Tribunal or before any authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Continuance of conviction, ruling, order or judgment.

10. Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favour of or against the firm may be enforced by or against the limited liability partnership.

Existing agreements.

11. Every agreement to which the firm was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date as if —

(a) the limited liability partnership were a party to such an agreement instead of the firm; and

(b) for any reference to the firm, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

Existing contracts, etc.

12. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the firm or to which the firm is a party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the firm.

Continuance of employment.

13. Every contract of employment to which paragraph 11 or paragraph 12 applies shall continue to be in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the firm.

Existing appointment, authority or power.

14. (1) Every appointment of the firm in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the firm which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

Application of paragraphs 7 to 14.

15. The provisions of paragraphs 7 to 14 (both inclusive) shall apply to any approval, permit or licence issued to the firm under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued.

Partner liable for liabilities and obligations of firm before conversion.

16. (1) Notwithstanding anything in paragraphs 7 to 14 (both inclusive), every partner of a firm that has converted into a limited liability partnership shall continue to be personally liable (jointly and severally with the limited liability partnership) for the liabilities and obligations of the firm which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion.

3604-8.9.9.

(2) If any such partner discharges any liability or obligation referred to in sub-paragraph (1), he shall be entitled (subject to any agreement with the limited liability partnership to the contrary) to be fully indemnified by the limited liability partnership in respect of such liability or obligation.

17. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following:—

Notice of
conversion in
correspondence.

(a) a statement that it was, as from the date of registration, converted from a firm into a limited liability partnership; and

(b) the name and registration number, if applicable, of the firm from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

THE THIRD SCHEDULE

(See section 56)

CONVERSION FROM PRIVATE COMPANY INTO LIMITED LIABILITY PARTNERSHIP

Interpretation.

1. In this Schedule, unless the context otherwise requires, —

(a) “company” means a private company as defined in clause (iii) of sub-section (1) of section 3 of the Companies Act, 1956;

1 of 1956.

(b) “convert”, in relation to a private company converting into a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the limited liability partnership in accordance with this Schedule.

Eligibility for conversion of private companies into limited liability partnership.

2. (1) A company may convert into a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

(2) A company may apply to convert into a limited liability partnership in accordance with this Schedule if and only if—

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.

(3) Upon such conversion, the company, its shareholders, the limited liability partnership into which the company has converted and the partners of that limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.

Statements to be filed.

3. A company may apply to convert into a limited liability partnership by filing with the Registrar —

(a) a statement by all its shareholders in such form and manner to be accompanied by such fees as the Central Government may prescribe, containing the following particulars, namely:—

(i) the name and registration number of the company;

(ii) the date on which the company was incorporated; and

(b) incorporation document and statement referred to in section 11.

Registration of conversion.

4. On receiving the documents referred to in paragraph 3, the Registrar shall, subject to the provisions of this Act and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

1 of 1956.

Registrar may refuse to register.

5. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act:

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 3 to be verified in such manner, as he considers fit.

6. On and from the date of registration specified in the certificate of registration issued under paragraph 4— Effect of registration.

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

7. If any property to which clause (b) of paragraph 6 applies is registered with any authority, the limited liability partnership shall, as soon as practicable, after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such form and manner as the authority may determine. Registration in relation to property.

8. All proceedings by or against the company which are pending before any Court, Tribunal or other authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership. Pending proceedings.

9. Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favour of or against the company may be enforced by or against the limited liability partnership. Continuance of conviction, ruling, order or judgment.

10. Every agreement to which the company was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date as if — Existing agreements.

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the company. Existing contracts, etc.

12. Every contract of employment to which paragraph 10 or paragraph 11 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company. Continuance of employment.

13. (1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed. Existing appointment, authority or power.

(2) Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

14. The provisions of paragraphs 6 to 13 (both inclusive) shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued. Application of paragraphs 6 to 13.

Notice of
conversion in
correspondence.

15. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—

(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

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THE FOURTH SCHEDULE

(See section 57)

CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LIMITED LIABILITY PARTNERSHIP

1. (1) In this Schedule, unless the context otherwise requires,—

Interpretation.

(a) "company" means an unlisted public company;

(b) "convert", in relation to a company converting into a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the limited liability partnership in accordance with the provisions of this Schedule;

(c) "listed company" means a listed company as defined in the Securities Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 issued by the Securities and Exchange Board of India under section 11 of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(d) "unlisted public company" means a company which is not a listed company.

2. (1) A company may convert into a limited liability partnership by complying with the requirements as to the conversion set out in this Schedule.

Conversion of company into a limited liability partnership.

(2) Upon such conversion, the company, its shareholders, the limited liability partnership into which the company has converted and the partners of that limited liability partnership shall be bound by the provisions of this Schedule that are applicable to them.

3. A company may apply to convert into a limited liability partnership in accordance with the provisions of this Schedule if and only if—

Eligibility for conversion.

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.

4. A company may apply to convert into a limited liability partnership by filing with the Registrar—

Statements to be filed.

(a) a statement by all its shareholders in such form and manner to be accompanied by such fee as the Central Government may prescribe containing the following particulars, namely:—

(i) the name and registration number of the company;

(ii) the date on which the company was incorporated; and

(b) incorporation document and statement referred to in section 11.

5. On receiving the documents referred to in paragraph 4, the Registrar shall, subject to the provisions of this Act, and the rules made thereunder, register the documents and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Registration of conversion.

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Companies with which it was registered under the provisions of the Companies Act, 1956 about the conversion and of the particulars of the limited liability partnership in such form and manner as the Central Government may prescribe.

1 of 1956.

6. (1) Nothing in this Schedule shall be construed as to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Act:

Registrar may refuse to register.

Provided that an appeal may be made before the Tribunal in case of refusal of registration by the Registrar.

(2) The Registrar may, in any particular case, require the documents referred to in paragraph 4 to be verified in such manner, as he considers fit.

Effect of
registration.

7. On and from the date of registration specified in the certificate of registration issued under paragraph 5—

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the records of the Registrar of Companies.

Registration in
relation to
property

8. If any property to which clause (b) of paragraph 7 applies is registered with any authority, the limited liability partnership shall, as soon as practicable, after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such form and manner as the authority may determine.

Pending
proceedings.

9. All proceedings by or against the company which are pending in any Court or Tribunal or before an authority on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Continuance of
conviction,
ruling, order or
judgment.

10. Any conviction, ruling, order or judgment of any Court, Tribunal or other authority in favour of or against the company may be enforced by or against the limited liability partnership.

Existing
agreements.

11. Every agreement to which the company was a party immediately before the date of registration, whether or not of such nature that the rights and liabilities thereunder could be assigned, shall have effect as from that date as if—

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

Existing
contracts, etc.

12. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company is a party shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the company.

Continuance of
employment.

13. Every contract of employment to which paragraph 11 or paragraph 12 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

Existing
appointment,
authority or
power.

14. (1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the company which is in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

15. The provisions of paragraphs 7 to 14 (both inclusive) shall apply to any approval, permit or licence issued to the company under any other Act which is in force immediately before the date of registration of the limited liability partnership, subject to the provisions of such other Act under which such approval, permit or licence has been issued.

Application of paragraphs 7 to 14.

16. (1) The limited liability partnership shall ensure that for a period of twelve months commencing not later than fourteen days after the date of registration, every official correspondence of the limited liability partnership bears the following, namely:—

Notice of conversion in correspondence.

(a) a statement that it was, as from the date of registration, converted from a company into a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes the provisions of sub-paragraph (1) shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

STATEMENT OF OBJECTS AND REASONS

With the growth of the Indian economy, the role played by its entrepreneurs as well as its technical and professional manpower has been acknowledged internationally. It is felt opportune that entrepreneurship, knowledge and risk capital combine to provide a further impetus to India's economic growth. In this background, a need has been felt for a new corporate form that would provide an alternative to the traditional partnership, with unlimited personal liability on the one hand, and, the statute-based governance structure of the limited liability company on the other, in order to enable professional expertise and entrepreneurial initiative to combine, organise and operate in flexible, innovative and efficient manner.

2. The Limited Liability Partnership (LLP) is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its members the flexibility of organising their internal structure as a partnership based on a mutually arrived agreement. The LLP form would enable entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements. Owing to flexibility in its structure and operation, the LLP would also be a suitable vehicle for small enterprises and for investment by venture capital.

3. Keeping in mind the need of the day, the Government had introduced the Limited Liability Partnership Bill, 2006 in the Rajya Sabha on the 15th December, 2006. It was referred to the Department Related Parliamentary Standing Committee on Finance for examination and report. The Hon'ble Committee presented its 58th Report to the Lok Sabha on 27th November, 2007 and also laid the said Report in the Rajya Sabha on the same day. The Hon'ble Committee made several recommendations which were examined and considered by the Government. Most of the recommendations made by the Hon'ble Committee have been accepted by the Government. Based on the recommendations of the Hon'ble Committee, extensive changes were found to be necessary in the Bill. Hence, it is proposed to withdraw the Limited Liability Partnership Bill, 2006 and introduce a fresh Bill incorporating the changes.

4. The salient features of the Limited Liability Partnership Bill, 2008, *inter alia*, are as follows:—

(i) the LLP shall be a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP will have perpetual succession;

(ii) the mutual rights and duties of partners of an LLP *inter se* and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation. The Bill, if enacted, would provide flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of proposed legislation;

(iii) the LLP will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be of tangible or intangible nature or both tangible and intangible in nature. No partner would be liable on account of the independent or unauthorised actions of other partners or their misconduct. The liabilities of the LLP and partners who are found to have acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited for all or any of the debts or other liabilities of the LLP.

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(iv) every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India. The duties and obligations of Designated Partners shall be as provided in the law;

(v) the LLP shall be under an obligation to maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;

(vi) the Central Government shall have powers to investigate the affairs of an LLP, if required, by appointment of competent Inspector for the purpose;

(vii) the compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the proposed legislation;

(viii) a firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of the proposed Bill. Upon such conversion, on and from the date of certificate of registration issued by the Registrar in this regard, the effects of the conversion shall be such as are specified in the proposed Bill. On and from the date of registration specified in the certificate of registration, all tangible (movable or immovable) and intangible property vested in the firm or the company, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, and the whole of the undertaking of the firm or the company, shall be transferred to and shall vest in the LLP without further assurance, act or deed and the firm or the company, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be;

(ix) the winding up of the LLP may be either voluntary or by the Tribunal to be established under the Companies Act, 1956. Till the Tribunal is established, the power in this regard has been given to the High Court;

(x) the proposed legislation would confer powers on the Central Government to apply provisions of the Companies Act, 1956 as appropriate, by notification with such changes or modifications as deemed necessary. However, such notifications shall be laid in draft before each House of Parliament for a total period of 30 days and shall be subject to any modification as may be approved by both Houses;

(xi) the Indian Partnership Act, 1932 shall not be applicable to LLPs.

5. The Bill seeks to achieve the above objectives.

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Notes on clauses

Clause 2.— This clause defines various expressions used in the Bill for the purposes of certainty in the interpretation of the proposed legislation, e.g., 'foreign limited liability partnership' as limited liability partnership which is formed, registered or incorporated outside India and establishes a place of business in India; 'limited liability partnership' as a partnership formed and registered under the proposed legislation; 'limited liability partnership agreement' as a written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to such partnership; and 'partner' in relation to limited liability partnership, as any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement.

Clause 3.— This clause seeks to provide that Limited Liability Partnership (LLP) is to be a body corporate having perpetual succession and a legal entity separate from its partners and any change in the partners of such partnership shall not affect its liabilities.

Clause 4.— This clause seeks to provide that the provisions of the Indian Partnership Act, 1932 shall not apply to an LLP.

Clause 5.— This clause seeks to provide that an individual or a body corporate may become a partner in an LLP. The clause also indicates the disqualifications which will prohibit an individual to become a partner of any LLP.

Clause 6.— This clause seeks to provide that an LLP shall consist of at least two partners and also provides that in a situation where the number of partners is reduced to one and such LLP carries on business with such sole partner for more than six months and then such partner, if having knowledge of such a situation, shall be liable personally for the obligations of the LLP.

Clause 7.— This clause seeks to provide that an LLP shall have at least two designated partners who shall be individuals and at least one of them shall be resident in India. This clause also seeks to provide that an individual shall not become a designated partner in any LLP unless he has given his prior consent to act as such to the LLP in the prescribed form and manner. Particulars of every designated partner who agrees to act as such shall be filed with the Registrar. This clause also seeks to provide that any partner may become or cease to be designated partner in accordance with the LLP agreement. It also seeks to empower Central Government to make rules for prescribing conditions and requirements for an individual to be a designated partner. It also provides that every designated partner shall obtain a Designated Partner Identification Number (DPIN) from the Central Government.

Clause 8.— This clause seeks to provide responsibilities and liabilities of the designated partner who shall be—

(a) responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of this Bill including filing of any document, return, statement and the like report pursuant to the provisions of this Bill and as may be specified in the LLP agreement; and

(b) liable to all penalties imposed on the LLP for any contravention of those provisions.

Clause 9.— This clause provides for the 30 days period for filling up of a vacancy of a designated partner. If no designated partner is appointed, or if at any time there is only one designated partner, each partner of the LLP shall be deemed to be a designated partner.

Clause 10.— This clause seeks to provide punishment for contravention of clauses 7, 8 and 9 of the Bill. The said clause indicates that if the LLP fails to appoint designated partners under sub-clause (1) of clause 7 of the Bill, then the LLP and its every partner shall

be punishable with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees. The clause also seeks to provide that if an LLP does not meet other requirements provided in sub-clause (5) of clause 7, clauses 8 and 9 in relation to designated partners, the LLP and its every partner shall be punishable with fine which shall not be less than ten thousand rupees and may extend to one lakh rupees.

Clause 11.— This clause seeks to provide for manner of filing of incorporation document, the fees and other statement of LLP with Registrar and also the contents and form of the incorporation document. It also seeks to provide for penalties for making statement by any person, knowing it to be false, or not believing it to be true, which shall not be less than ten thousand rupees and may extend to five lakhs rupees and also for imprisonment for a term which may extend to two years.

Clause 12.— This clause seeks to provide for registration of incorporation document of LLP and issue of a certificate of its incorporation by the Registrar. The said clause indicates that the certificate of registration shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Clause 13.— This clause seeks to provide that every LLP shall have a registered office to which all communications will be made and received. It also seeks to provide for mode of serving the documents to LLP and intimating the change of the address of the registered office in the prescribed manner and subject to prescribed conditions to the Registrar. This clause further seeks to provide for penalties of not less than two thousand rupees which may extend to twenty-five thousand rupees in case the LLP contravenes the provisions of this clause.

Clause 14.— This clause seeks to provide that LLP shall be a body corporate and can sue and be sued, acquire, own, hold and develop or dispose of property. It also seeks to provide that an LLP may have a common seal if it decides to have it.

Clause 15.— This clause seeks to provide an obligation on every LLP to suffix “limited liability partnership” or “LLP” with its name. The clause also seeks to provide that no LLP shall be registered with an undesirable name or a name which is identical or nearly resembles to that of any other partnership firm or an LLP or a body corporate or a registered trade mark or a trade mark the application of which is pending.

Clause 16.— This clause seeks to provide for making of an application for reservation of proposed name of the LLP or change of its existing name to the Registrar who may reserve the name for a period of three months. It also seeks to empower the Central Government to make rules regarding form, manner and fees payable on such application. This clause further seeks to empower the Central Government to frame rules which may be followed by Registrars while reserving names of LLPs.

Clause 17.— This clause seeks to empower the Central Government to give direction to the LLP to rectify its name if the name registered is undesirable or so nearly resembles the name of any other LLP or body corporate or other name as to be likely to be mistaken for it. It seeks to provide that in case the LLP fails to comply with such direction it shall be liable for imposition of a fine of not less than ten thousand rupees which may extend to five lakh rupees and the designated partner of such LLP shall be liable to pay fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Clause 18.— This clause seeks to provide for an application to be made by an LLP to the Registrar in case another LLP has been incorporated with the same name subsequently, for giving a direction to the LLP (subsequently registered) to change its name. A period of twenty-four months has been provided within which the former LLP will have to make an application to the Registrar.

Clause 19.— This clause seeks to provide that an LLP may change its name by filing with the Registrar a notice of such change in such form, and manner and on payment of fee as may be prescribed by the rules.

Clause 20.— This clause seeks to provide for imposition of a fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees in case any person carries on business using the words 'Limited Liability Partnership' or 'LLP' without getting incorporated as LLP.

Clause 21.— This clause seeks to provide that every LLP shall ensure that its invoices, official correspondence and publications bear the name, address of its registered office and registration number of the LLP and the statement that it is registered with limited liability. It also seeks to provide for imposition of a fine of not less than two thousand rupees which may extend to twenty-five thousand rupees in case the LLP contravenes these provisions.

Clause 22.— This clause seeks to provide that the persons who subscribe their names to the incorporation document shall be partners of LLP and any other person may also become partner of the LLP in accordance with its agreement.

Clause 23.— This clause seeks to provide that the mutual rights and duties of the partners of the LLP *inter se* and that of the LLP and its partners shall be governed by the LLP agreement and in absence of any such agreement, such mutual rights and duties shall be determined as set out in the First Schedule of the Bill. It also seeks to empower the Central Government to prescribe, by rules, the form, manner and fee for filing the LLP agreement and informing changes therein. This clause further seeks to provide that any agreement, made before the incorporation of LLP, between the partners who subscribe their names to the incorporation document may impose obligation on LLP, if ratified by all the partners after its incorporation.

Clause 24.— This clause seeks to provide for the circumstances and disqualifications under which or pursuant to which a person may cease to be a partner of an LLP. It also seeks to provide for a partner's obligation to the LLP or to the other partners or to other persons incurred during the period when he was a partner of the LLP. It also seeks to provide that a former partner or a person entitled to his share in case of death or insolvency of former partner shall not have any right to interfere in the management of the LLP.

Clause 25.— This clause seeks to provide for the requirement and the procedure for filing notice about changes in the names and addresses of partners of the LLP to the Registrar. The notice shall be in such form as may be prescribed. The clause also seeks to provide that every partner shall inform the LLP of any change in his name or address within fifteen days of such change, failing which he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees. This clause further seeks to provide that when a person becomes or ceases to be a partner, the LLP shall file a notice with the Registrar within thirty days from the date such person becomes or ceases to be a partner, failing which the LLP shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Clause 26.— This clause seeks to provide that every partner of the LLP is, for the purpose of business of the LLP, an agent of the LLP but not of other partners.

Clause 27.— This clause seeks to provide that the LLP shall not be bound by anything done by a partner in dealing with a person if that partner has no authority to act for LLP in doing a particular act and the person with whom he is dealing also knows that the partner has no authority for such act and to provide that an obligation of LLP, whether arising out of contract or otherwise will solely be the obligation of LLP. It also seeks to provide that liabilities of LLP are to be met from the property of LLP. It further seeks to provide that LLP shall be liable for a wrongful act or omission by a partner in the course of the business of the LLP or with its authority.

Clause 28.— This clause seeks to provide that the partner is not personally liable directly or indirectly for an obligation of LLP solely by reason of his being a partner of the LLP. It further seeks to provide that the obligation of an LLP shall not affect the personal liability of a partner for his own wrongful act or omission but a partner shall not be personally liable for wrongful act or omission of any other partner.

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Clause 29.— This clause seeks to provide that any person, who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in any LLP is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. It also seeks to provide that where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon. This clause further seeks to provide that where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

Clause 30.— This clause seeks to provide for unlimited liability of the LLP and its partners in case LLP or any of its partners carry out an act with intent to defraud creditors of the LLP or any other person or if they carry out an act for any fraudulent purpose. This clause further seeks to provide that in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP. This clause further seeks to provide that any person who knowingly carries such act shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees. This clause further seeks to provide that where an LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

Clause 31.— This clause seeks to provide that the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP in case such partner or employee has provided useful information during investigation of such LLP for finding out the offence. This clause further seeks to provide that no such partner or employee shall be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated merely because of his providing information to the Court or Tribunal.

Clause 32.— This clause seeks to provide various kinds in which contributions may be made by partners of an LLP and the manner in which such contributions shall be valued and disclosed in the accounts of the LLP.

Clause 33.— This clause seeks to provide that obligation of a partner to make contribution shall be as per the LLP agreement. This clause further seeks to provide that a creditor of an LLP may enforce the original obligation against any partner of the LLP without notice of any subsequent compromise between partners.

Clause 34.— This clause seeks to provide for requirement relating to maintenance of proper books of account by the LLP relating to its affairs for each year and for filing of an annual statement of account and solvency with the Registrar in such form and manner as may be prescribed. This clause seeks to empower the Central Government to prescribe rules for the manner in which the accounts of LLPs shall be audited. It also seeks to empower the Central Government to grant exemption to any class or classes of LLPs from audit requirement. It also seeks to provide for imposition of a fine of not less than twenty-five thousand rupees but which may extend to five lakh rupees for LLP and of a fine of not less than ten thousand rupees but which may extend to one lakh rupees for designated partner of LLP, in case the LLP fails to comply with these provisions.

Clause 35.— This clause seeks to provide that every LLP shall be required to file with the Registrar an annual return duly authenticated every year. It also seeks to empower the Central Government to prescribe, by rules, the contents and manner of filing of such annual

return. This clause also seeks to provide that any LLP which fails to comply with these provisions shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and the designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Clause 36.— This clause seeks to provide that the incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and Annual Return filed by each LLP with the Registrar shall be available for inspection in the office of the Registrar by the public. It also seeks to empower the Central Government to prescribe by rules, the manner and amount of fees for such inspection.

Clause 37.— This clause seeks to provide that if any person makes any statement in any return, statement or other document under this Bill which is false in any material particular, or which omits any material fact, knowingly, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.

Clause 38.— This clause seeks to empower the Registrar to call for information, for the purposes of carrying out the provisions of this Bill, from any person including any present or former partner or designated partner or employee of the LLP and in case of non-receipt of any information from them or information furnished being insufficient, to summon them before him. This clause seeks to provide that any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this clause shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

Clause 39.— This clause seeks to provide for empowering the Central Government to compound any offence under this Bill which is punishable with fine by collecting a sum not exceeding the amount of maximum fine prescribed for such offence.

Clause 40.— This clause seeks to empower the Central Government to prescribe by rules the manner in which the Registrar may destroy any document filed or registered with him by the LLPs.

Clause 41.— This clause seeks to provide that in case any LLP is in default in complying with the provisions relating to filing with the Registrar of any return, account or other document or giving of any notice to him, the Registrar may make an application before the Tribunal for making an order for directions in order to make good the default within a time frame.

Clause 42.— This clause seeks to provide that the rights of a partner to a share of the profits and losses of the LLP and to receive distributions shall be transferable in accordance with the LLP agreement and such transfer shall not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP. This clause further seeks to provide that such transfer would not entitle the transferee to participate in the management of the LLP.

Clause 43.— This clause seeks to provide the circumstances under which investigation of the affairs of an LLP may be ordered and the inspectors appointed by the Central Government to carry out such investigation.

Clause 44.— This clause seeks to provide that an application by partners of the LLP for investigation of the LLP shall be supported by such evidence as the Tribunal may require and that the Central Government may require the applicants to give security of such amount as may be prescribed for payment of the costs of the investigation.

Clause 45.— This clause seeks to prohibit a firm, body corporate or other association to be appointed as an inspector.

Clause 46.— This clause seeks to provide that the inspector appointed by the Central Government to investigate the affairs of the LLP under this Bill may carry out investigation into the affairs of other entities associated with the LLP in the past or present or of partner or designated partner, after seeking prior approval of the Central Government.

Clause 47.— This clause seeks to provide the duty of the designated partners and partners of the LLP to preserve and produce all books, papers relating to the LLP before inspector and otherwise give all assistance to the inspector for investigation. This clause also seeks to empower the inspector to examine such persons on oath. This clause further seeks to provide that if any person fails without reasonable cause or refuses to produce before an inspector any book or paper or furnish any relevant information or to appear before the inspector personally when required to do so or to answer any question which is put to him by the inspector under this clause or to sign the notes of any examination, he shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees and with a further fine which shall not be less than fifty rupees but which may extend to five hundred rupees for every day after the first day after which the default continues.

Clause 48.— This clause seeks to empower the inspector appointed by the Central Government under this Bill to investigate the affairs of an LLP, to enter the place where books and papers are kept, search and seize the documents or books and papers relating to LLP, after seeking permission from the Judicial Magistrate of the First Class or Metropolitan Magistrate in this regard, if he has reasonable cause that the partner of such LLP or other entity may destroy, mutilate, alter, falsify or secret the documents. This clause also seeks to empower inspector to keep such books and papers in his custody for a period not exceeding six months for investigation and return the same, after needful is done, to the concerned entity or person and inform the Magistrate of such return.

Clause 49.— This clause seeks to provide that an inspector investigating an LLP may, and if so directed by the Central Government, shall make interim reports to that Government in relation to an investigation carried out by him. It further seeks to provide that on conclusion of the investigation, a final report shall be made to the Central Government by the inspector. This clause further seeks to provide that the Central Government shall forward a copy of the report other than an interim report to the concerned LLP or related entity or persons. A copy of such report may also be furnished to any person or entity related to or affected by the report on the request and on payment of prescribed fee.

Clause 50.— This clause seeks to provide that if, from the inspector's report, it appears to the Central Government that any person in relation to LLP or any other entity being investigated has been guilty of any offence for which he is liable, the Central Government may prosecute such person for the offence. This clause further seeks to provide that it shall be the duty of all partners, designated partners, other employees and agents of the LLP to give the Central Government all assistance in connection with such prosecution.

Clause 51.— This clause seeks to provide that if any such LLP is liable to be wound up under this Bill or any other law and it appears to the Central Government from the report made by an Inspector under clause 49 that it is expedient to do so by reason that the business of the LLP is being conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose or that the affairs of the LLP are not being conducted in accordance with the provisions of the Bill, the Central Government, may, cause to be presented to the Tribunal by any person authorised by it, a petition for the winding up of the LLP on the just and equitable grounds.

Clause 52.— This clause seeks to provide that if from any report of inspector, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the LLP or any entity whose affairs have been investigated for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such LLP or such other entity or for the recovery of any property of such LLP or such other entity, which has been misapplied or wrongfully retained, the Central Government may itself bring proceedings for that purpose.

Clause 53.— This clause seeks to provide about the manner in which the expenses of an investigation by an inspector appointed by the Central Government under this Bill shall

be defrayed and reimbursed. This clause also seeks to provide that any amount for which a LLP or other entity is liable, shall be a first charge on the sums or property recovered by such LLP or other entity during investigation. The clause further seeks to provide that the amount of expenses in respect of which any LLP, other entity, a partner or designated partner or any other person is liable to reimburse to the Central Government shall be recoverable as arrears of land revenue. This clause further seeks to provide that any costs or expenses incurred by the Central Government or in connection with proceedings for recovery of damages or property brought by virtue of this Bill shall be treated as expenses of the investigation.

Clause 54.— This clause seeks to provide that a copy of any report of any inspector appointed under this Bill, authenticated in a manner as may be prescribed by rules, shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.

Clause 55.— This clause seeks to provide that a firm may convert into a LLP in accordance with the provisions contained in Chapter X and the Second Schedule.

Clause 56.— This clause seeks to provide that a private company may convert into a LLP in accordance with the provisions contained in Chapter X and the Third Schedule.

Clause 57.— This clause seeks to provide that an unlisted public company may convert into a LLP in accordance with the provisions contained in Chapter X and the Fourth Schedule.

Clause 58.— This clause seeks to provide the requirement and manner pursuant to which a firm, private company or an unlisted public company shall be allowed to be converted into a LLP. It also seeks to provide that the converted LLP shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered about the conversion and of the particulars of the limited liability partnership in such manner and form as the Central Government may prescribe. This clause also seeks to provide that on such conversion all property of the erstwhile entity shall vest in the LLP and the erstwhile entity shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

Clause 59.— This clause seeks to empower the Central Government to make rules for (i) provisions in relation to establishment of place of business by foreign LLPs within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or (ii) such regulatory mechanism with such composition as may be prescribed in such rules.

Clause 60.— This clause seeks to provide the manner in which compromise or arrangement of LLPs shall be proposed, agreed by members or creditors of a LLP and confirmed by the Tribunal. It also seeks to provide the time-limit within which the order made by Tribunal shall be filed with the Registrar and the effect of such filing. It also seeks to provide that if default is made in complying with provisions relating to filing of such order of Tribunal with the Registrar, the LLP and every designated partner of the LLP shall be punishable with fine which may extend to one lakh rupees.

Clause 61.— This clause seeks to provide that where the Tribunal makes an order sanctioning a compromise or an arrangement in respect of a LLP, it—

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement, as it may consider necessary, for the proper working of the compromise or arrangement.

The said clause further seeks to provide that if the Tribunal is satisfied that a compromise or an arrangement sanctioned cannot be worked satisfactorily, it may make an order for winding up of the LLP.

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Clause 62.— This clause seeks to provide that where an application is made to the Tribunal for sanctioning of a compromise or arrangement which relates to reconstruction of any LLP or LLPs, or the amalgamation of any two or more LLPs and under a scheme the whole or any part of the undertaking, property or liabilities of any LLP concerned in the scheme is to be transferred to another LLP, the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for matters like transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP, the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP; the dissolution, without winding up, of any transferor LLP; the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out. It also seeks to provide that if default is made in complying with provisions relating to filing of such order of Tribunal with the Registrar, the LLP and every designated partner of the LLP shall be punishable with fine which may extend to fifty thousand rupees.

Clause 63.— This clause seeks to provide that the winding up of an LLP may be either voluntary or by the Tribunal and a LLP so wound up may be dissolved.

Clause 64.— This clause seeks to specify the circumstances in which an LLP may be wound up by the Tribunal.

Clause 65.— This clause seeks to empower the Central Government to make rules for provisions in relation to winding up and dissolution of LLPs.

Clause 66.— This clause seeks to provide that a partner may lend money to and transact other business with the LLP and that he shall have the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Clause 67.— This clause seeks to empower the Central Government, to direct, by notification in the Official Gazette, that any of the provisions of the Companies Act, 1956 shall apply to any LLP or shall apply to any LLP with such exception, modification and adaptation as may be specified in the notification. This clause further seeks to provide that such notification shall be laid in draft before each House of Parliament for a total period of thirty days and shall be subject to such modification as may be approved by both the Houses.

Clause 68.— This clause seeks to provide that any document required to be filed, recorded or registered under this Bill may be filed, recorded or registered in such manner and as per such conditions as may be prescribed by rules by the Central Government.

Clause 69.— This clause seeks to provide that any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time up to a period of three hundred days from the date within which it should have been filed, on payment of additional fees of one hundred rupees for every day of such delay in addition to any fees as is payable for filing of such document or return. This clause also provides that such document or return may, without prejudice to any other action or liability under this Act, also be filed after such period of three hundred days on payment of fees and additional fees specified in this section.

Clause 70.— This clause seeks to provide that in case a LLP or any partner or designated partner of such LLP commits any offence, the LLP or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offence for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

Clause 71.— This clause seeks to provide that other laws are also applicable to the LLP in addition to the provisions of this Bill and their application is not barred.

Clause 72.— This clause seeks to provide that the Tribunal shall discharge such powers and perform such functions as are, or may be, conferred on it by or under the provisions of

this Bill or any other law for the time being in force. This clause also seeks to allow filing of appeal to the Appellate Tribunal by any person who is aggrieved by an order or decision of Tribunal.

Clause 73.— This clause seeks to provide that whoever fails to comply with any order made by the Tribunal under any provision of this Bill shall be punishable with imprisonment which may extend to six months and shall also be liable to a fine which shall not be less than fifty thousand rupees.

Clause 74.— This clause seeks to provide that any person guilty of an offence under this Bill for which no punishment is expressly provided shall be liable to a fine which may extend to five lakh rupees but which shall not be less than five thousand rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.

Clause 75.— This clause seeks to provide that where the Registrar has reasonable cause to believe that an LLP is not carrying on business or its operation, the name of LLP may be struck off from the register of LLPs. This clause seeks to empower the Central Government to prescribe, by rules, the manner which shall be followed for such striking off of name of any LLP by the Registrar. This clause also seeks to provide that Registrar shall, before striking off the name of any LLP under this clause give such LLP a reasonable opportunity of being heard.

Clause 76.— This clause seeks to provide that where an offence under this Bill committed by an LLP is proved to have been committed with the consent or connivance of a partner or designated partner of the LLP or is attributable to any neglect on the part of the partner or designated partner of that LLP, the partner or designated partner of the LLP as well as that LLP shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Clause 77.— This clause seeks to provide that notwithstanding any provision to the contrary in any Act, the Judicial Magistrate of the first class or the Metropolitan Magistrate shall have jurisdiction to try any offence under the provisions of this Bill and shall have power to impose punishment in respect of the said offence.

Clause 78.— This clause seeks to confer upon the Central Government the power to alter schedules to the Bill. The said clause further seeks to provide that every notification in respect of such alteration shall be laid before both the Houses of Parliament.

Clause 79.— This clause seeks to confer upon the Central Government the power to make rules for carrying out the provisions of this Bill. This clause seeks to enumerate the various matters in respect of which such rules may be made. The clause further seeks to provide that every rule made under the provisions of this Bill is required to be laid before both the Houses of Parliament.

Clause 80.— This clause seeks to confer power upon the Central Government to make provision, by order published in the Official Gazette, to remove difficulties which may arise in giving effect to the provisions of this Bill and such order to be issued only within a period of two years from the date of the commencement of this Bill. This clause seeks to provide that the orders made under this clause shall be required to be laid before both the Houses of Parliament.

Clause 81.— This clause seeks to provide that until the Tribunal and the Appellate Tribunal are constituted under the provisions of the Companies Act, 1956, the provisions of this Bill shall have effect subject to the following modifications, namely:—

(a) for the word “Tribunal” occurring in clause (b) of sub-section (1) of section 41, clause (a) of sub-section (1) of section 43 and section 44, the words “Company Law Board” had been substituted;

(b) for the word “Tribunal” occurring in section 51 and in sections 60 to 64, the words “High Court” had been substituted;

(c) for the words “Appellate Tribunal” occurring in sub-section (2) of section 72, the words “High Court” had been substituted.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (d) of clause 2 of the Bill confers power upon the Central Government to specify, by notification in the Official Gazette, any other body corporate (not being a company as defined in section 3 of the Companies Act, 1956 or an LLP as defined in the proposed legislation) not to be included in the definition of 'body corporate'.

2. Clause 67 of the Bill confers power upon the Central Government to give directions, by notification in the Official Gazette, that any of the provisions of the Companies Act, 1956 shall apply to any LLP or shall apply to any LLP with such exception, modification and adaptation as may be specified in the notification.

3. Clause 78 of the Bill confers power upon the Central Government to alter any of the provisions contained in any of the Schedules to this Act publication of notification in the Official Gazette.

4. Clause 79 of the Bill confers power upon the Central Government to make rules for carrying out the purposes of the Bill. The matters in respect of which rules may be made relate, *inter alia*, to provide for form and manner of prior consent to be given by designated partner under sub-section (3) of section 7; form and manner of particulars of every individual agreeing to act as designated partner of LLP under sub-clause (4) of clause 7; conditions and requirements for appointment of an individual as designated partner under sub-clause (5) of clause 7; manner of filing the incorporation document and payment of fee payable thereof with the Registrar under item (b) of sub-clause (1) of clause 11; form of statement to be filed under item (c) of sub-clause (1) of clause 11; form of incorporation document under item (a) of sub-clause (2) of clause 11; other information to be contained in the incorporation document under item (g) of sub-clause (2) of clause 11; mode of serving the documents on a LLP or a partner or a designated partner and the form and manner in which any other address may be declared by the LLP under sub-clause (2) of clause 13; the form and manner of notice to the Registrar and conditions in respect of change of registered office under sub-clause (3) of clause 13; the form and manner of application and amount of fee payable to the Registrar under sub-clause (1) of clause 16; manner in which names will be reserved by the Registrar under sub-clause (2) of clause 16; manner in which an application may be made for change of name under sub-clause (1) of clause 18; form and manner of notice of change of name of LLP and the amount of fees payable under clause 19; form and manner of filing of LLP agreement or any change in such agreement with the Registrar and the amount of fee payable under sub-clause (2) of clause 23; form of notice, the amount of fee payable and the manner of authentication of the statement under items (a), (b) and (c) of sub-clause (3) of clause 25; manner of accounting and disclosure of monetary value of contribution of a partner under sub-clause (2) of clause 32; books of account and the period of their maintenance under sub-clause (1) of clause 34; form of statement of account and solvency under sub-clause (2) of clause 34; form, manner and time of filing of statement of account and solvency and the amount of fee payable under sub-clause (3) of clause 34; the manner in which the accounts of a LLP shall be audited under sub-clause (4) of clause 34; form and manner of filing of annual return under sub-clause (3) of clause 35; manner and amount of fee payable for inspection of incorporation documents, names of the partners, Statement of account and solvency and annual return under clause 36; destruction of documents by Registrar under clause 40; the amount required as security under item (a) of sub-clause (3) of clause 43; the amount of security to be given under clause 44; fee payable for furnishing a copy under item (b) of sub-clause (2) of clause 49; manner of authentication of report of inspector under clause 54; manner and form of particulars about conversion under proviso to sub-clause (1) of clause 58; provisions in relation to establishment of place of business by foreign LLPs within India and regulatory mechanism and composition under clause 59; manner of calling, holding and conducting meeting under sub-clause (1) of clause 60; provisions in relation to winding up and dissolution of LLPs under clause 65; manner and conditions for filing a

document electronically under sub-clause (1) of clause 68; manner for striking off the names of LLPs from the register of LLPs by the Registrar under clause 75; medium and form of statement containing particulars and amount of fee payable on the statement under sub-paragraph (a) of paragraph 4 of the Second Schedule; manner and form of particulars about conversion under proviso to paragraph 5 of the Second Schedule; form and manner of the statement and the amount of fee payable on the statement under sub-paragraph (a) of paragraph 3 of the Third Schedule; manner and form of particulars about conversion under proviso to paragraph 4 of the Third Schedule; form and manner of the statement and amount of fees payable under sub-paragraph (a) of paragraph 4 of the Fourth Schedule; manner and form of particulars about conversion under proviso to paragraph 5 of the Fourth Schedule; any other matter which is to be, or may be, prescribed in respect of which provision is to be, or may be, made by rules.

5. Clause 80 of the Bill empowers the Central Government to remove, by order, any difficulty which may arise in giving effect to the proposed legislation. It has been provided that no such order shall be made after the expiry of a period of two years from the date of commencement of the proposed legislation. It has also been provided that a copy of every such order made shall be laid before each House of Parliament.

6. The notification issued under sub-clause (1) of clause 67, 78 and rules made under sub-clause (2) of clause 79 shall be laid before each House of Parliament.

7. The matters in respect of which notifications or order may be issued and the rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

V.K. AGNIHOTRI,
Secretary-General.

PUBLISHED BY THE SECRETARY-GENERAL, RAJYA SABHA, UNDER RULE 68 OF THE RULES OF
PROCEDURE AND CONDUCT OF BUSINESS IN THE RAJYA SABHA.